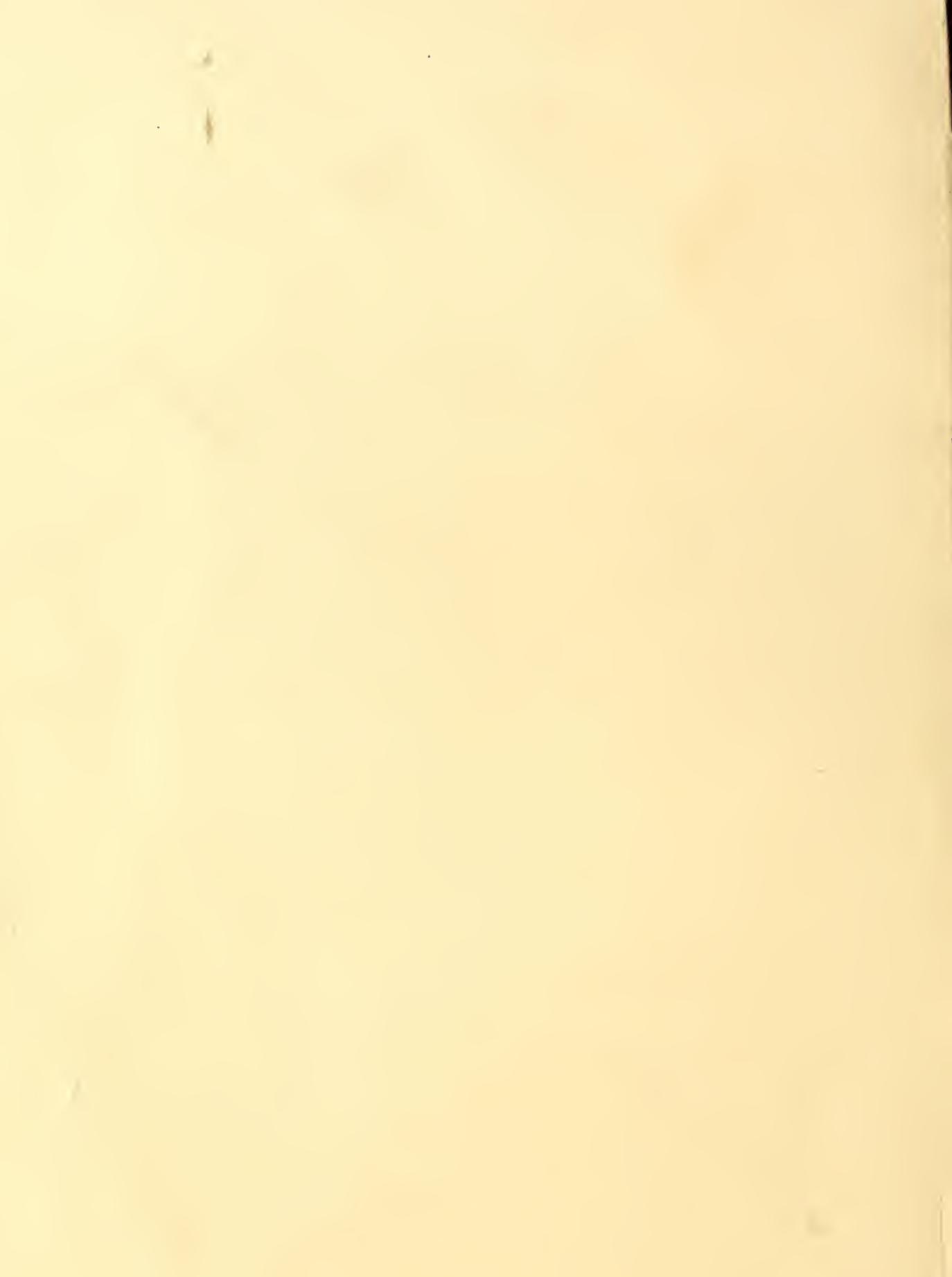


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October 1956



# Federal Milk Marketing Orders

Their Establishment  
Terms  
and Operation

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UNITED STATES DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL MARKETING SERVICE Washington, D.C.

## CONTENTS

	Page
I. INTRODUCTION .....	1
Scope of the milk order program .....	1
The outline of Federal milk orders .....	1
II. THE GENERAL PURPOSES OF MILK ORDERS .....	3
III. ECONOMIC AND LEGISLATIVE BACKGROUND .....	4
Cooperative efforts .....	4
Federal Government intervention .....	5
Court review .....	5
Economic conditions shape the program .....	5
IV. PROCEDURES FOR DEVELOPING AND ISSUING FEDERAL MILK ORDERS ..	9
Government and industry roles .....	10
Conditions indicative of need for an order .....	10
Findings relative to interstate commerce in milk .....	11
Pre-hearing procedures .....	12
The public hearing .....	13
The recommended decision .....	15
The final decision .....	15
Producer approval .....	16
The order or amended order .....	17
Suspension or termination .....	17
Review of orders or provisions of orders .....	17
V. PRINCIPAL PROVISIONS OF A FEDERAL MILK ORDER .....	19
Marketing area .....	19
Handler .....	20
Producer .....	20
Classified pricing .....	20
Levels of class prices .....	21
Class I prices .....	23
Other class prices .....	24
Producer price returns .....	24
Producer settlement fund .....	29
Inter-order obligations .....	29
Compensatory payments .....	30
Allocation of producer milk to classes .....	31
Seasonal pricing plans .....	31
Differentials .....	31
VI. ADMINISTRATION OF FEDERAL MILK ORDERS .....	32
Dairy Divisions operations .....	32
Market Administrator operations .....	34
Current developments affecting milk orders .....	35
New marketing methods .....	36
Growth of interest in Federal orders .....	37
VII. INFORMATION NEEDED .....	38

The Federal milk order program has expanded rapidly in recent years. With its growth a need has developed for more information about Federal milk orders. Effective application of the program depends upon free, full and informed participation by all interested parties in the public proceedings which govern the orders. This report is designed to help achieve that result. It was prompted by a request made jointly by the National Milk Producers Federation, the Milk Industry Foundation and the Evaporated Milk Association for material which would provide a better understanding of Federal milk orders. Representatives of these associations met on several occasions with members of the Dairy Division, Agricultural Marketing Service, to discuss the questions most frequently asked about Federal milk orders. They suggested many of the subject headings for the report.

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## FEDERAL MILK MARKETING ORDERS;

Their Establishment, Terms and Operation

2 by the  
Dairy Division  
U.S. Agricultural Marketing Service.  
United States Department of Agriculture

### I. INTRODUCTION

#### Scope of the Milk Order Program

On April 1, 1956, there were 65 marketing areas in the United States in which minimum prices paid by handlers to farmers for milk were regulated by Federal milk orders. Approximately 188,000 farmers delivered milk at that time, at the rate of about 30 billion pounds of milk annually, to handlers who were required to pay them for such milk according to the terms of these Federal orders.

The markets in which Federal milk orders operated extended throughout the central part of the United States from Duluth to New Orleans and Corpus Christi. They varied in size from the metropolitan areas of New York and Chicago to relatively small urban centers such as Paducah, Kentucky.

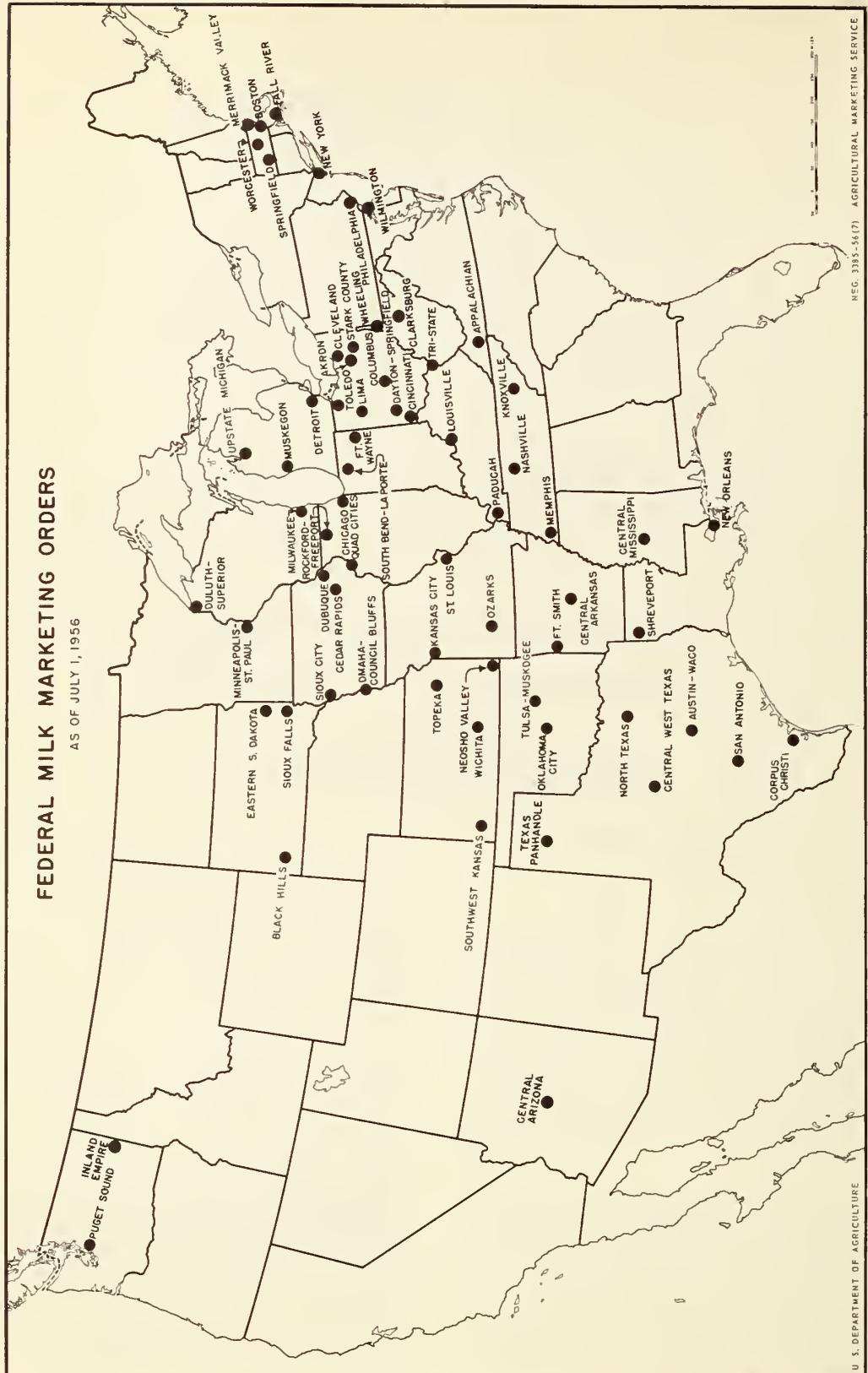
The population of these 65 market sales areas calculated on the basis of the 1950 Census represented about half of the urban population of the country. Consumers who resided outside the defined marketing areas were served to some extent from the supply of milk sold under these programs.

#### The Outline of Federal Milk Orders

The first steps in the development of a Federal milk order are taken by members of the local fluid milk industry, generally by organized groups representing producer interests. Finally, a Federal milk order may be issued for the market by the Secretary of Agriculture under authority of the Agricultural Marketing Agreement Act of 1937, as amended, 7 USC 601, and the Rules of Practice and Procedure, 7 CFR Part 900. Each milk order regulates the minimum prices handlers must pay producers for milk purchased for sale in a designated marketing area.

## FEDERAL MILK MARKETING ORDERS

AS OF JULY 1, 1956



The Act specifies the terms a milk order may contain. It provides for example, that an order regulates milk produced for sale in a defined marketing area. Since local milk markets have individual problems which affect both supply and sales conditions, each milk order is tailored to the particular requirements of the local market. However, the basic framework of each order includes the essentials of a classified price plan, a system of minimum prices, a plan for equalizing prices to producers, and provisions relating to the administration of the pricing provisions.

Under the classified price plans, handlers are required to pay for milk purchased from producers different prices depending on the use made of such milk. Usually fluid milk, and sometimes fluid cream, is placed in Class I. This is the highest priced class. Milk which is used to produce manufactured dairy products such as butter, cheese, and evaporated milk is placed in lower priced classes. A system of minimum class prices is set forth in each order. These prices vary according to the butterfat content of the milk. Adjustments to reflect differences in values at different locations are included in the price plans in orders for markets which draw milk from wide areas.

The total class values of all uses of milk by a handler or all handlers in a market are combined to determine an average price so that producers receive a uniform price regardless of the specific use of milk delivered by an individual farmer. In some markets the use value of milk is combined for each individual handler to determine a uniform price for the milk received by that handler. These are known as individual handler pools. In markets where the uses of all handlers are combined and a uniform blended price is determined for the entire market, the system is called a market-wide pool.

Each milk order is administered by a Market Administrator, who is an agent of the Secretary of Agriculture. The Market Administrator's principal duty is to be certain that handlers are accounting for their milk receipts and making payments to producers in accordance with the terms and provisions of the order. For this pur-

pose, reports are required of handlers. The Market Administrator's staff investigates the handler's business and audits his records to be sure that the full, required payments are made to producers.

## II. THE GENERAL PURPOSES OF MILK ORDERS

Federal milk orders are legal instruments which define the terms under which handlers who engage primarily in the handling of milk for fluid distribution in a regulated city market purchase the milk from dairy farmers. The purpose of these orders is to make sure that an ample supply of wholesome milk is available to consumers at all times. This is done by promoting and maintaining orderly marketing of milk by farmers.

Orderly marketing is achieved in part under the program through the certainties provided by a marketing order. The terms for the purchase of milk are spelled out and are known in advance to both buyers and sellers. These terms are developed with public participation. Producers, handlers and consumers have an opportunity to take part in the public hearings which are held prior to the issuance of an order. Much of the necessary basic factual information is supplied for use by all such interested groups. Accurate statistical information about supplies and demand for milk in a market is not available in most markets until after a Federal order program has been instituted. An order program requires accurate and complete reporting, as well as verification of all such reports. This information affords a more explicit and factual basis for decisions on prices designed to reflect market supply and demand condition.

Federal milk orders do not guarantee a given level of price. They provide prices related to local and general economic conditions. They do not guarantee farmers a market with any buyer. Federal milk orders do not control production, nor do they restrict the marketing of milk by farmers. They do not establish sanitary or quality standards. Sanitary regulations applicable to milk sold in fluid markets are prescribed and administered by local and State health authorities. A milk order is limited to the terms under which handlers must pay for

the milk they buy from farmers and sell in regulated fluid markets.

The responsibility of the Federal Government in the development of milk orders is to determine the fairness of the various proposals, to resolve the differences in the public interest, and to enforce the orders after they are put into effect.

The task assigned to the United States Department of Agriculture in appraising the effects of proposed pricing plans on the different interested groups carries with it an enormous responsibility. That responsibility is to make fair and just decisions as they affect the thousands of milk producers, the hundreds of milk handlers, and the millions of milk consumers who are directly affected. Handlers of milk and producers of milk insofar as they operate differently and are located in various parts of the country are affected differently by these pricing plans. Consumers inside and outside Federal milk marketing areas also may be affected differently.

The Department's responsibility in analyzing the complex problems which affect the public interest in the marketing of milk could not be successfully carried out without the framework of public procedures provided by the Act. The public hearing is the means by which the interests of all persons may be considered and pricing plans which are fair and equitable to all may be developed. The public hearing offers an opportunity for minority as well as majority groups to bring their interests to the attention of the Department, and to indicate how they would be affected by any proposed pricing plan.

The public procedures of the program offer an opportunity for leaders in the dairy industry, for farmer organization leaders and for the specialists from colleges and universities to have a hand in shaping Government decisions.

### III. ECONOMIC AND LEGISLATIVE BACKGROUND

The Agricultural Marketing Agreement Act of 1937 and its predecessors, the Agricultural Adjustment Acts of 1935 and 1933, insofar as these Acts are related

to milk, grew out of the needs of milk producers for assistance in achieving and maintaining some degree of bargaining power over the prices they receive for milk. The characteristics of milk itself contribute to producers' bargaining difficulties. Because of its bulky and perishable nature the milk must be moved promptly to market. Because milk is produced every day of the year, farmers necessarily continue shipping it to market even when market prices are not satisfactory.

It is necessary, also, to maintain specialized transportation systems to get the milk from farm to market. Frequently these transportation systems are operated or arranged for by the milk dealers. Some farmers, therefore, do not have the freedom of choice, at least over short run periods, as to the milk dealer to whom they will ship and sell. Under such circumstances, an individual farmer cannot bargain effectively.

The production of milk varies widely with the seasons and the demand varies from day to day. Because of its perishable nature, milk cannot be stored to balance the peaks and troughs of supply. The industry, therefore, carries a reserve to make sure that the supply will be sufficient at all times. Milk which is not needed for fluid use is manufactured into dairy products but at a reduced price to producers. Consequently, producers strive to gain an outlet in the higher priced fluid market and often make price concessions to that end.

### Cooperative Efforts

As early as 1910, producers in a number of markets had banded together into cooperative associations for the purpose of gaining bargaining power over the prices for their milk. During the early years these associations tried to bargain with milk dealers for a flat price which would be applicable to all milk of their members, regardless of use. But the pressure of reserve supplies normal to the fluid milk industry led to a break-down of the flat price plan. Handlers with excess milk either took fluid sales from other handlers by offering milk at reduced prices which in turn were passed back to farmers, or they refused to accept excess milk from

farmers at the flat price since it had to be converted to manufacturing uses at a lower value.

In an effort to promote stability in milk markets and as a basis upon which to bargain for prices for members' milk which would be related to the costs of producing and marketing it, cooperatives developed what is known as the "classified price system." This system was in effect in a number of the largest markets in the country by about 1920. Along with the classified price plan, various pooling arrangements were used.

The price plans succeeded or failed depending upon the extent to which producers were able to organize the supply of milk under the control of the cooperatives. Impetus had been given the development of cooperatives by the Clayton Act of 1914 and later by the Capper-Volstead Act in the early 1920's, and producers concentrated on solving their problems through cooperative efforts. During the 1920's industrial activity in the cities was at a high and increasing level. Largely because of this it was possible to make these voluntary plans effective for a large portion of the market while the cooperatives attempted to include in their membership all the producers in the market.

But there were advantages in remaining outside of these pricing arrangements and some milk producers and some milk dealers could not be persuaded to join in a market-wide program. When the economic depression of the early 1930's struck, the voluntary plans failed to maintain satisfactory prices.

## Federal Government Intervention

In the early 1930's Congress authorized emergency aid programs for many segments of the economy. Such programs also were undertaken to assist milk producers. Under the Agricultural Adjustment Act of 1933 a program of licenses was developed. All milk dealers in a given market were required to pay producers on a classified price basis, and to pool the returns to farmers either on a handler or market-wide basis. The Act of 1935 provided for marketing orders instead of licenses. The Agricultural Marketing Agreement Act of 1937

is largely a restatement of the provisions relating to marketing agreements in the Act of 1935.

## Court Review

Milk orders issued under the authority of the Agricultural Marketing Agreement Act have been reviewed by the courts on many occasions. The constitutional authority for the Act and the validity of the New York and Boston milk orders issued under its authority were upheld by the Supreme Court in United States v. Rock Royal Cooperative, Inc., 307 U. S. 533 and H. P. Hood & Sons v. United States, 307 U. S. 588. The power of Congress to regulate the intrastate transactions which directly affect interstate commerce was confirmed by the Supreme Court in United States v. Wrightwood Dairy Co. 315 U. S. 110. Various aspects of individual milk orders have been subjected to review by the courts.<sup>1</sup>

## Economic Conditions Shape the Program

In the early years of the Federal milk order program, economic conditions for dairy farmers had been so unsatisfactory that the problem of improving prices for farmers overshadowed all other objectives. Although returns from milk production were low, the production of milk was continued at previous levels or increased while the consumption of milk was declining. The decline in milk consumption and the increased production resulted in unwieldy supplies of milk and depressed prices.

The measures taken to raise milk prices during this period were an emergency means of improving farm income and achieving a fair standard of living. Government officials knew that higher prices might intensify the surplus problem, but emergency considerations outweighed the function of price as a regulator of supply and demand. In 1933, the Government purchases of surplus dairy products were begun to support the level of

<sup>1</sup> Dairymen's League Cooperative Association v. Brannan, 173 F. 2d 57, certiorari denied; 338 U. S. 825; Grandview Dairy v. Jones, 157 F. 2d 5, certiorari denied; 329 U. S. 787; Shawangunk Cooperative Dairies v. Jones, 153 F. 2d 700; Waddington Milk Co. v. Wickard, 140 F. 2d 97; Queensboro Farm Products v. Wickard, 137 F. 2d 969; Titusville Dairy Products Co. v. Brannan, 176 F. 2d 332, certiorari denied; 338 U. S. 905; Bailey Farm Dairy Co. et al v. Anderson, 157 F. 2d 87; Wawa Dairy Farms, v. Wickard, 149 F. 2d 860.

Number of producers, milk delivered by producers, number of regulated handlers in Federal order markets, 1955, and population of marketing areas defined by such orders as compiled from 1950 Census

Market	Producers	Producer deliveries	Handlers	Population
NEW ENGLAND				
Boston .....	11,899	1,671,024	51	2,175,627
Merrimack Valley.....	1,085	156,991	47	320,206
Springfield.....	1,306	203,791	44	391,791
Worcester.....	726	116,364	42	279,258
Fall River.....	235	50,301	29	126,188
MIDDLE ATLANTIC				
New York.....:	48,555	8,129,254	135	9,466,175
Philadelphia.....	7,430	1,244,306	43	2,591,648
SOUTH ATLANTIC				
Wheeling.....	1,394	<sup>2</sup> 21,051	31	402,177
Clarksburg.....	620	<sup>2</sup> 11,202	13	260,115
Tri-State.....	2,271	218,691	33	592,333
Appalachian.....	563	93,930	7	377,659
EAST NORTH CENTRAL				
<u>Eastern Group</u>				
Cleveland.....	7,568	990,740	72	1,611,312
Akron.....	2,323	<sup>3</sup> 248,741	9	443,342
Stark County.....	1,145	153,961	20	289,854
Upstate Michigan.....	501	<sup>2</sup> 7,104	24	146,592
Muskegon.....	542	76,159	13	144,838
Detroit.....	12,679	1,721,216	72	3,122,957
Toledo.....	1,900	242,056	13	455,970
Lima.....	881	113,201	13	112,028
Dayton-Springfield.....	2,509	338,892	22	480,405
Columbus.....	2,096	289,657	11	455,919
Cincinnati.....	4,533	439,061	36	723,952
<u>Western Group</u>				
Fort Wayne.....	964	108,340	11	133,607
Milwaukee.....	2,610	490,113	17	911,881
Rockford-Freeport.....	231	46,613	10	166,691
Chicago.....	21,531	4,403,950	102	5,372,806
South Bend-LaPorte.....	934	136,658	17	195,101
WEST NORTH CENTRAL				
<u>Northern Group</u>				
Duluth-Superior.....	1,550	166,858	10	147,521
Minneapolis-St. Paul.....	4,172	669,820	18	1,064,994
Dubuque.....	239	42,659	7	55,108
Cedar Rapids-Iowa City.....	799	138,487	11	99,508
Quad Cities.....	1,236	207,973	20	243,140
Eastern South Dakota.....	149	<sup>4</sup> 19,371	11	49,193
Sioux Falls-Mitchell.....	344	65,021	7	66,405
Black Hills.....	152	29,563	10	54,935
Sioux City.....	490	67,962	5	97,921
Omaha-Lincoln-Council Bluffs.....	2,335	295,814	17	440,035

See footnotes at end of table.

Number of producers, milk delivered by producers, number of regulated handlers in Federal order markets, 1955, and population of marketing areas defined by such orders as compiled from 1950 Census--Continued

Market	Producers	Producer deliveries	Handlers	Population
<b>WEST NORTH CENTRAL--Continued</b>				
<u>Southern Group</u>		<i>Number<sup>1</sup></i>	<i>1,000 lbs.</i>	<i>Number<sup>1</sup></i>
St. Louis.....	4,096	584,410	40	1,419,523
Ozarks.....	1,297	187,561	18	409,080
Kansas City.....	2,869	429,614	20	834,420
Topeka.....	459	65,260	8	105,418
Neosho Valley.....	750	102,850	16	356,359
Wichita.....	935	160,645	9	209,897
Southwest Kansas.....	338	51,073	14	103,662
<b>EAST SOUTH CENTRAL</b>				
Louisville.....	2,338	324,710	24	589,500
Paducah.....	284	35,239	5	49,137
Knoxville.....	968	137,243	15	267,302
Nashville.....	1,503	194,267	11	321,758
Memphis.....	1,422	210,683	14	521,712
Central Mississippi.....	1,043	147,141	17	580,532
<b>WEST SOUTH CENTRAL</b>				
<u>Northern Group</u>				
Central Arkansas.....	731	<sup>5</sup> 9,315	15	406,189
Fort Smith.....	248	63,450	3	54,355
Tulsa-Muskogee.....	1,252	208,324	11	331,719
Oklahoma City.....	1,383	180,467	12	395,881
<u>Southern Group</u>				
New Orleans.....	2,503	294,589	28	649,261
Shreveport.....	455	<sup>6</sup> 65,923	10	296,690
North Texas.....	3,092	716,227	22	1,437,082
Austin-Waco.....	591	<sup>3</sup> 127,482	9	565,705
San Antonio.....	470	160,057	10	500,460
Corpus Christi.....	455	<sup>7</sup> 47,001	6	285,187
Central West Texas.....	794	142,539	11	284,748
<b>MOUNTAIN</b>				
Central Arizona.....	481	<sup>5</sup> 24,097	19	552,762
<b>PACIFIC</b>				
Puget Sound.....	3,790	831,089	54	1,332,481
Total.....	185,044	28,928,151	1,474	46,930,012

<sup>1</sup> End of year.

<sup>2</sup> November and December.

<sup>3</sup> February - December.

<sup>4</sup> May - December.

<sup>5</sup> December only.

<sup>6</sup> April - December.

<sup>7</sup> July - December.

prices paid farmers for milk and butterfat. In the late 1930's a business recession resulted in reduced consumer purchases. This was accompanied by an upsurge in milk production. In 1938, milk production increased 4 billion pounds over the previous year and Government purchases amounted to 3 billion pounds of whole milk equivalent.

It soon became evident that a program of increasing milk prices in any market already oversupplied with milk could not be continued indefinitely. By 1940, emergency measures were no longer adequate. Attempts were then made to establish price levels which would result in a reasonable adjustment of supply and sales in the market. However, the surpluses which had been built up in some of these markets made it impossible from the standpoint of the welfare of thousands of dairy farmers to adjust prices quickly to a level that would bring the supply of milk in line with the demand for it.

In this period, formula pricing of Class I milk was introduced. Some changes in prices in line with changed economic conditions were accomplished by these early formulas. The rapidly changing economic pattern of the early 1940's, with the high level of industrial activity and rising price level, stimulated an interest in a supply-demand concept of pricing. Excess supplies disappeared quickly in the face of increasing wartime demands, and the problem soon became one of inducing sufficient production to satisfy the market needs.

Then came wartime measures to allocate our Nation's resources. Price ceilings were imposed in 1942, and in 1943 Government incentive payments were made to encourage milk production. Price was again stripped of its supply-demand function in order to prevent runaway inflation. During this period, Federal milk orders continued to function as market-wide pricing systems in several markets. The levels of class prices remained relatively constant and changed only as national price objectives were revised. Although price levels played a lesser role in the program, the classified pricing and other provisions of Federal milk orders continued to serve as useful instruments for maintaining an effective system of milk marketing in about 30 markets.

After World War II the supply of milk in the United States soon caught up with demand, and it became necessary again to support dairy product prices. In 1949, Government purchases of dairy products equalled 2-1/2 billion pounds of whole milk. Purchases in 1950 amounted to more than 3-1/2 billion pounds. Then came the outbreak in Korea and the diversion of production resources to military uses. Milk supply and demand came into closer balance, but this proved only temporary. Beginning in late 1952 a substantial expansion in the annual rate of milk production became apparent. This expansion came on partly because of economic conditions and partly as a result of technological developments. The impetus to production came at a time when demand for dairy products, particularly in terms of milk fat, was declining.

In 1953, the milk production excess purchased by the Federal Government totaled nearly 10 billion pounds, or eight percent of all milk produced in the United States. The excess was nearly as great in 1954 when Government purchases equaled 7-1/2 percent of total milk production. The balance between supply and sales improved in 1955 but Government purchases of dairy products in that year were still equivalent to 3.7 percent of total milk production.

It is not strange that Federal milk orders have been requested in recent years by dairy farmers in so many areas. In periods of heavy supplies of milk, there is a natural tendency for handlers to offer milk received in excess of their fluid sales at reduced prices to distributors in other markets. Such cut-price milk tends to break the level of prices paid to all farmers. Moreover, with a decline in the level of farm milk prices, the desire to avoid unnecessary price reductions becomes more compelling. The number of Federal milk orders increased from 33 operating in 1949 to the 65 effective April 1, 1956.

Federal milk orders are used most extensively in the North Atlantic States and in the Central region. More than half of all milk sold wholesale by farmers to milk plants in the North Atlantic States is sold under the terms of the seven Federal milk orders effective there.

In recent years dairymen in other areas have requested and adopted Federal milk

# PERCENT OF ALL MILK SOLD UNDER FEDERAL ORDERS\*



U. S. DEPARTMENT OF AGRICULTURE

NEG. 3383-56(7) AGRICULTURAL MARKETING SERVICE

orders. Nearly one-third of the milk delivered by farmers as milk to plants in the North Central region is priced under Federal milk orders today as compared with about one-fifth in 1949. In the South Central region nearly 40 percent of milk sold by farmers to plants is now marketed under the terms of milk orders. More than half the milk sold wholesale in 11 States is priced under terms of Federal milk orders (see map above).

## IV. PROCEDURES FOR DEVELOPING AND ISSUING FEDERAL MILK ORDERS

### Government and Industry Roles

The role of government in carrying out the procedures for developing and issuing Federal milk orders is defined by the Agricultural Marketing Agreement Act of 1937, as amended, which authorizes such programs. The responsibility of the U. S. Department of Agriculture is to judge the effect of the various proposals; to resolve, in accordance with the standards prescribed

in the Act, the problems presented and to enforce the orders after they are issued.

The principal mechanism included in a milk order is the statement of prices which handlers shall pay to producers for milk and the terms and conditions under which such prices shall be paid. Handlers and producers who are parties to such transactions clearly have a vital interest and responsibility in developing the terms under which such milk is priced.

The procedures under which Federal milk orders are established provide that the initiative for the development of a milk order be taken by the persons directly concerned with the program. Since the purpose of a milk order is to provide dairy farmers with a marketing plan under government supervision and the issuance of the order requires the approval of the farmers affected, farmers through their cooperative associations take the first steps in proposing an order.

Although there is no suggestion in the Agricultural Marketing Agreement Act that milk orders be made available only to markets in which producers are organized, the objectives and machinery of the program are such that the orderly and systematic representation of producers which a marketing cooperative provides is essential for effective operation.

### Conditions Indicative of Need for an Order

The declared purpose of the Agricultural Marketing Agreement Act is "to establish and maintain such orderly marketing conditions" . . . "as will establish" . . . [prices which] "are reasonable in view of the price of feeds, the available supplies of feeds," [and which will] "insure a sufficient quantity of pure and wholesome milk, and be in the public interest."

The disorderly marketing situations which give rise to the need for an order spring from conditions of inequality and lack of uniformity in the marketing system. There may be inequality of bargaining strength between producers and handlers or there may be inequality of bargaining position between different groups of producers or different handlers. There may be a variety of prices and pricing systems which cause dissatisfaction and uneconomic shifts in the use or procurement of milk for the fluid market.

Evidence of inequality or lack of uniformity which tends to disrupt orderly marketing is manifest in a variety of circumstances. A general weakness of bargaining strength on the part of producers often results in prices generally lower than those paid in surrounding markets. A prolonged condition of such depressed prices may drive enough producers from the market to threaten seriously the level of milk supply needed for fluid sales.

Many of the indications of inequality of bargaining strength between producer groups are suggestive also of a general weakness in the bargaining position of all producers in the market. Often price concessions won by handlers in bargaining with one producer group are used as a lever to lower the prices paid another group.

The refusal of some handlers to accept all or part of the milk offered by producers who are their normal suppliers may stem from a lack of coordinated bargaining on the part of producers. This is true particularly if the handler substitutes a supply from a source which would under equal bargaining conditions be no more economical for him.

Handlers sometimes use special premiums or deductions to discriminate between producers in the prices they pay. In some instances there is no attempt to conceal the fact that different producers received different prices for the same grade of milk. The failure to weigh and test accurately the milk delivered by producers may result in differences in prices paid for a product of standard weight and test.

In markets where a cooperative association has negotiated a classified plan of pricing under which some handlers purchase milk, the flat price plans under which handlers may buy from other producers undermine the cooperative's bargaining position. In some instances handlers may refuse to bargain with organized producers and may temporarily offer inducements to unorganized producers to dissuade them from joining a cooperative. Activities which detract from the bargaining strength of organized producers tend eventually to weaken the position of all producers in the market.

In order to function smoothly the marketing system must hold the confidence of buyers and sellers particularly in the marketing system for fluid milk in which payments are normally made on a prearranged basis but at a date subsequent to delivery by several weeks. Lack of information about the market and the absence of an impartial agency to appraise the buying practices used may leave a void in which general lack of confidence in the marketing system grows into disorderly marketing.

None of the conditions cited should be regarded as a "prima facie" indication of the need for an order. The significance of the condition in terms of orderly marketing varies in different situations and the conditions themselves vary in degree.

## Findings Relative to Interstate Commerce in Milk

The Agricultural Marketing Agreement Act specifies that orders "shall regulate, in the manner . . . provided, only such handling of . . . [milk]. . . , or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof." Handling which directly burdens, obstructs, or affects interstate commerce is then the legitimate subject of regulation under this Act. The price competition between milk moved in interstate commerce and intrastate milk supplies has been held to sufficiently burden interstate commerce to warrant the institution of Federal regulation.

The extent to which the handling must affect interstate commerce in order to support an order is not, according to the Supreme Court of the United States, "a technical legal conception but a practical one, drawn from the course of business." Interstate commerce in milk has expanded in recent years. Technological developments affecting the milk industry of the nation have broadened marketing areas for milk and the products of milk are generally distributed on a nation-wide market.

The interstate character of commerce in milk and dairy products is described in the following excerpt from a decision of the Secretary of Agriculture with respect to the Paducah, Kentucky, milk order December 17, 1947:

"The close interrelationship of prices between milk for fluid distribution and milk for manufactured purposes indicates that the interchangeability of supplies of milk for fluid distribution and of milk for manufacturing purposes is such that prices of milk for fluid distribution in any given area are subject, in a considerable degree, to the same supply and demand forces on a regional and on a national scale, as are prices for milk for manufacturing uses.

"There is one large market for dairy products as a whole, and this market is broken down into markets for the several products and into a large number of local submarkets for fluid milk and cream, one

for each city, town, or village. This results from the fact that the fluid uses of milk and cream compete with manufacturing uses, and that supplies flowing into these local markets shift from one use to another whenever prices change relatively.

"The close relationship between fluid milk and manufactured milk prices may be explained, in part, by the fact that it is impossible to forecast accurately the daily requirements of fluid milk in any market, so that some milk intended for fluid distribution finds its way into manufactured dairy products. In addition, producers will, over a period of time, shift their methods of disposal of milk in accordance with changing price relationships.

"The prices received by producers for milk entering into manufacturing use are closely related to the United States average farm price for butterfat. Furthermore, the prices received by producers for milk used for fluid consumption are closely associated with the price received by producers for milk entering all other uses. About 42 to 44 percent of the milk produced for commercial disposition is produced to supply fluid milk markets. Because of the uncertainties of demand and supply associated with fluid milk markets, much of the milk produced for such outlets is manufactured into products.

"The fluid milk price in any given market will influence the prices in other distant markets and the price of milk used in manufactured dairy products flowing across state lines. In periods of surplus production there is a greater incentive for destructive producer price competition. In an unstabilized market where returns to producers are not based upon proportionate sharing of the fluid milk sales under a classified price plan, there is a tendency, created by the pressure of producers to have a share of the higher priced or fluid market, for the market price to be reduced below the point justified by the existing supply and demand situation in the fluid market. With a declining price in the fluid market in such instances there results an adverse effect on the market of other manufactured

products, which effect is spread through a series of price repercussions effecting a decline of prices at other outlets for milk in all its various uses, including other fluid milk. It does not matter that the initial movement in this direction occurs in a market receiving its total supply within a single state. A slump in the price of milk in any sizable market tends to encourage producers to transfer their milk to available facilities for manufactured milk products, which transfer results in an increased amount of dairy products being manufactured locally."

### Pre-hearing Procedures

The General Regulations of the Department describe the pre-hearing procedures as follows:

"§ 900.3 Proposals. (a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Deputy Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Deputy Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Deputy Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Deputy Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as herein-after provided."

In the usual circumstances a proposal for a hearing on a new order is made by a farmer cooperative association representing producers who supply milk to the marketing area in which the regulation of the sale of milk is sought. Such a proposal is referred to the Dairy Division of the Agricultural Marketing Service. The Dairy Division has been assigned the responsibility for investigating each hearing proposal and recommending to the Deputy Administrator of Agricultural Marketing Service that a hearing on the proposal be called or denied.

At the time the petitioner for a hearing supplies the full text of a proposed order on which hearing is requested, the proposal is usually considered an active program in the Dairy Division and one or more marketing specialists in the Division are assigned to study the proposal and the marketing conditions in the proposed area.

Before a proposed order is drafted the proponents of a milk order usually hold many discussions and conferences with other groups in the local areas where an order is contemplated. The purposes and mechanics of a Federal milk order are explained. The producer organization which is interested in the possibility of improving its marketing system by developing a Federal milk order usually takes the leadership in arranging such meetings to acquaint others in the area with their program.

County agricultural agents often assist the producer association representatives by explaining the general purposes of the Federal milk order program and the methods used in the program operations. For larger meetings, a specialist in dairy marketing is sometimes called from the Federal Extension Service to assist in this educational phase of the program development.

Sometimes a marketing specialist of the Dairy Division is available to attend meetings for the purpose of explaining the purposes and operations of Federal milk orders. The State and land grant colleges and universities and the Federal Extension Service provide education concerning the Federal milk order program and its operations. Specialists in the Dairy Division assist in preparing material about the Federal milk order program which the information and educational agencies use to explain the program.

The Dairy Division has established a practice of advising milk handlers and other interested persons who might be affected by a proposed milk order that a proposal for an order has been filed and that a hearing is being considered. At the same time the Division invites alternative and additional proposals which may be included in a hearing notice if one is issued. Conferences are often held by Division staff members with handler and producer representatives to discuss a marketing problem prior to the planning of a hearing. Such conferences are often held with representatives from several markets when mutual marketing problems arise.

Such other proposals as well as the order as proposed by the original proponents are studied by the Dairy Division specialists in their inquiry regarding the holding of a hearing. If it appears from the inquiry by the Dairy Division that a proposed order is feasible and that proponents are prepared to go to a hearing and present evidence of the need for an order, a recommendation is made by the Director of the Dairy Division to the Deputy Administrator of Agricultural Marketing Service that a hearing notice be issued. In no event, however, is it the function of the pre-hearing study to resolve with finality any of the questions which are to be determined from the evidence introduced at the hearing.

Important points which must be established by inquiry prior to the recommendation of a hearing on a proposed new order are:

1. That marketing conditions in the area are susceptible of improvement by the issuance of a milk order.
2. That evidence pertinent to the consideration of a milk order will be forthcoming at the hearing.
3. That the proponents of the order appear to have the support of a substantial number of producers in the market.
4. That marketing of milk in the area is affected by interstate commerce.

The exact nature and extent of the pre-hearing study varies with the individual circumstances. During the course of any investigation the marketing specialist con-

sults with handler and producer groups and makes himself available for consultation upon the request of any interested parties. Sometimes the need for a hearing may be obvious and in other cases the market disturbance may be less evident on the surface. The necessities of a practical and economic administration of the program require that sufficient preliminary study be made to warrant the expenditure of time and money by Government and industry which a public hearing requires. Proposals which obviously would not tend to carry out the policy of the statute are not included in the hearing notice. Before a rehearing is held it must be established that new evidence is available.

The formal notice of the hearing on the consideration of a new order must be published in the Federal Register at least 15 days before a hearing. In practice a longer period is usually allowed. The official notice designates the time and place at which the hearing will be held and contains the proposals which are to be considered.

The pre-hearing activities described relate to procedure before the holding of a hearing on a proposed order for a new area. The procedures are similar in most respects for hearings on proposed amendments to an established order. If the proposed amendment relates to only a few issues, the pre-hearing procedures may be simple. If the amendment proposed is complex, the preliminary investigation may be as extensive as in the case of a new order proposal.

There are a few differences in the procedures leading to an amendment hearing. Only 3 days notice of the hearing is required for a hearing announcement on certain types of proposed amendments. Whereas a proposed order for a new area is normally sponsored by a producer group, proposed amendments are often sponsored by handlers.

### The Public Hearing

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the handling of milk in the market area for which a Federal milk order is proposed. The hearing notice contains proposed provi-

sions of an order. Evidence at the hearing, however, is not restricted to the terms of the specific proposals in the hearing notice. At the hearing evidence is received relative to all aspects of the marketing conditions which are referred to in the proposals.

It is the general policy of the Department to hold its public hearings in the market for which the order is proposed. The hearing is conducted by a Hearing Examiner. There are currently five Hearing Examiners in the Department of Agriculture. These Hearing Examiners can be removed only for cause and their office operates as a separate unit within the Department of Agriculture.

The Hearing Examiner presides over the hearing in much the same way as the chairman of any meeting, determines the order in which witnesses are to appear at the hearing, and rules on any questions which may arise. If an objection to the Hearing Examiner's ruling is made, the objector may argue in his brief for a reversal of the ruling by the Secretary.

All the testimony at the public hearing is taken under oath or affirmation and is reported verbatim. Any interested person who desires to testify is given an opportunity to be heard on matters relevant and material to the issues under consideration. Questioning of witnesses is permitted to clarify facts in their testimony. Experience indicates, however, that in most instances a direct statement will better serve the purpose of full revealment of the facts. Furthermore, witnesses may refuse to answer questions. While their testimony is strictly voluntary, their refusal to answer questions may affect the weight to be given their statements.

At the close of the hearing, the Hearing Examiner sets a time period within which written briefs may be filed by interested persons. The briefs must refer to evidence presented at the public hearing and may offer no new facts for consideration. After the hearing the Examiner scrutinizes the verbatim record for accuracy of content and then certifies it as a true correct record. The record is then turned over to the Dairy Division for study and preparation of a recommendation on the issues.

A marketing specialist of the Dairy Division who is familiar with the marketing conditions in the particular area and the operation of milk orders under various conditions is assigned to each public hearing on a proposed order or amendment. Since the hearing record certified by the Hearing Examiner is the source of information upon which the Dairy Division must make a recommendation on the issue, it is imperative that each record be as complete and as clear as possible with respect to the relevant facts. Except for official notice which may be taken of facts contained in official documents, the public hearing record is the sole source of information upon which the issues may be appraised. But official notice is limited. For example, official notice may be taken of the provisions in another Federal milk order but not of the marketing conditions in the other area which called for such provisions. The marketing specialist is responsible for getting in the record as much of the relevant information as is possible. He follows the testimony of witnesses carefully to note any omission of information which may be pertinent to the consideration of the issue, and to attempt to elicit such information or to clarify the testimony when it is apt to be confusing upon review at a later date. He directs the preparation of statistical exhibits and other pertinent data which are readily available to the Department of Agriculture and introduces such material in the hearing record. It is the responsibility of the marketing specialist to be sure that complete data upon which to make a decision are available to the Department in the record. In a few cases where expert testimony of a special type may be needed a marketing specialist is sometimes assigned to testify concerning order provisions. Such assignments are limited to factual testimony concerning a provision and the specialist does not appear as an advocate or opponent.

An attorney from the Department's Office of the General Counsel is usually assigned to each hearing and shares with the marketing specialist the responsibility for eliciting information for the record and represents the Department on questions of a legal nature which may arise at the hearing.

The principal participants at the hearing are the representatives of producers, handlers and consumers who appear as witnesses at the hearing. These witnesses

present the evidence concerning marketing conditions in the area from their knowledge of the market.

The data necessary to evaluate the terms of a proposed milk order include a broad field of information. Evidence which is considered pertinent to the consideration of a milk order relates to marketing, price and bargaining problems, interstate commerce, marketing institutions, the character of the marketing area, classification systems in effect in the marketing area, health requirements applicable to milk and its products, transportation systems, pooling and all other factors affecting supply and demand conditions. Information needed by the United States Department of Agriculture for consideration of a proposed Federal milk order is outlined in more detail on pages 38-40.

### The Recommended Decision

Since the marketing of milk is a very complex business the regulation must be drafted to accomplish the purposes of Federal milk orders under many diverse situations. To afford dairy farmers, milk dealers, and the general public every opportunity to appraise the effect of a proposed milk order, a tentative order is issued by the Department after analysis of the evidence introduced at the public hearing. The length of time ensuing between the close of the hearing and the issuance of the recommended decision and proposed order varies considerably depending on the complexity of the issues involved. Interested persons are given an opportunity to consider the proposed order and then file written exceptions to the findings, conclusions and provisions of the recommended order.

The General Regulations of the Department require the issuance of such a recommended decision and specify its contents as follows:

"§ 900.12(b) Contents. The Deputy Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law or discretion presented on the record, and proposed findings and conclusions

with respect to such issues as well as the reasons or basis therefor; (2) A ruling upon each proposed finding or conclusion submitted by interested persons, and (3) An appropriate proposed marketing agreement or marketing order effectuating his recommendations."

The recommended decision is mailed to all known interested parties and is also published in the Federal Register. The decision specifies the period of time within which written exceptions may be filed by interested persons. The Regulations provide that in situations found to be emergencies on the record testimony and where time does not permit the issuance of a recommended decision, this step in the procedure may be omitted. The emergency omission of a recommended decision applies in practice only to amendments, not to new orders.

The recommended decision is drafted by marketing specialists in the Dairy Division after careful study of the record and appraisal of the issues. When the draft of the decision has been reviewed and approved within the Dairy Division, a docket is prepared transmitting the recommendation to the Deputy Administrator, together with a copy of the record, for his review and, if approved, issuance.

Before the docket reaches the Deputy Administrator, it is referred to the Department's General Counsel for review of its legal aspects. This review by the General Counsel applies to all of the actions taken by the Department in developing an order or amendment.

The exceptions filed by interested persons must be based on the facts contained in the hearing record. They may point to conclusions on the basis of those facts which are at variance with the conclusions stated in the recommended decision. The written exceptions provide the opportunity for a review of the Department's conclusions based on judgments formed by interested parties. The final decision must be made, however, on the basis of the standards in the statute as they are interpreted by the Department.

### The Final Decision

The findings and conclusions contained in the recommended decision are reexamined by marketing specialists in the Dairy Division

in the light of views filed by interested persons in their exceptions. Then a final decision is drafted, and transmitted to the Secretary for review and, if approved, issuance.

The final decision includes a statement of the Department's findings and conclusions as approved by the Secretary of Agriculture and the completed text of the tentatively approved order or amendment. The decision recites the reasons for accepting or denying the proposals advanced at the hearing and includes rulings on exceptions filed by interested persons to the recommended decision.

A tentative marketing agreement is also contained in the final decision. The Marketing Agreement Act requires that handlers be given an opportunity to sign a marketing agreement containing terms and provisions similar to those in milk order. Handlers generally have not signed such marketing agreements. However, the order may be made effective without the marketing agreement if producers approve the order and if the Secretary finds that the failure of handlers to sign the agreement obstructs the effectuation of the Act and that the issuance of the order is the only means of advancing the interest of the producers.

The provisions of the order contained in the final decision represent the final proposal of the Department. If producers fail to approve the order in its entirety, the order is not issued.

### Producer Approval

A proposed order is presented to producers for their approval. Approval of the entire order is required. Producers may not pick and choose provisions which they prefer. Whenever the Secretary recommends substantial changes in an order, he does so to make the order better serve the public interest. The requirement that producers must approve the order in the terms which the Secretary of Agriculture has approved it assures the public and all interested persons that any such order provides only provisions which are in the public interest.

The wide acceptance of the milk order program is based in large part on the knowledge of all interested parties that decisions of the Secretary are based on facts presented in an open public hearing where all interested parties are afforded an opportunity to present their views and facts regarding the matters at issue and that the decisions of the Secretary are made in the public interest. Allowing the Secretary's decision to be modified by the vote of producers would detract from the impartiality in the administration of the milk order program.

Prior to the issuance of an order or an amending order, the Secretary must find that such order is approved by two-thirds of the producers who supplied the market during the designated representative period, or by producers who supplied two-thirds of the milk sold in the designated marketing area in that period. If the order establishes an individual-handler pool the percentage of producers approving the order must be at least 75.

The eligibility to vote of producers whose approval is necessary for the issuance of an order is determined according to their affiliation with the market during a representative period, usually the latest delivery period for which the necessary records of producer deliveries and plant utilization are available. There is no legal authority for the determination of approval by separate groups of producers, by geographic or other classification defined under one order. Approval or disapproval must be determined by producers as defined in each order.

The Act provides further that producer approval may be determined by a referendum in which case the requirements of producer approval apply to the number of eligible producers voting in the referendum. The referendum is conducted by a designated agent of the Secretary of Agriculture. It may be conducted by mail. In a referendum on a proposed new order the ballots are usually cast personally at designated polling places (or by the cooperative association on behalf of its members). The balloting is usually by mail in a referendum on proposed amendments.

The Agricultural Marketing Agreement Act provides expressly that upon the request of an approved bonafide cooperative association of producers the Secretary must accept the vote of the cooperative as approval or disapproval of the entire membership eligible to vote on a proposed order. The determination of the cooperative's eligibility to participate is made by the Director of the Dairy Division on the basis of application by the cooperative and the submission of evidence that such cooperative qualifies under the terms of the Capper-Volstead Act, its activities are controlled by its members and it is engaged in marketing milk of its members.

### The Order or Amended Order

With the finding of approval by the requisite number of producers the Secretary issues the order or amendment and directs all handlers to market milk regulated by such order in conformity to and in compliance with the terms and provisions of such order. In the case of new orders the pricing provisions are usually made effective after the handlers have been given an opportunity to observe the record keeping requirements of the order in action.

The order thus promulgated remains in effect until an amendment or amended order developed through the same procedures has been issued. In emergency situations the order or certain terms and provisions of it may be suspended or terminated.

### Suspension or Termination

The suspension authority is used when the action requested is susceptible of correction by use of suspension and time will not permit the holding of a hearing with the usual procedure involved in deleting the particular provisions by amendment. Since the usual procedures which have been established to assure that the Department is advised of all aspects and interests affected by the proposed change are omitted in issuing a suspension order, the need for the action must be exceptional and clear. A public meeting is held or a request for a statement of the opinions of interested parties is made concerning the need for a suspen-

sion unless there is imperative and unequivocal need for emergency action.

The Secretary terminates an order if he finds it no longer accomplishes the purposes of the Act. An order must be terminated at the request of a majority of producers who produce more than half the milk supply for the market.

### Review of Orders or Provisions of Orders

The Act authorizes a handler to challenge before the Secretary of Agriculture an order, or any provision thereof, "or any obligation imposed in connection therewith" as "not in accordance with law," and to ask to have it modified or to be exempted from it. When the order is so challenged, the determination of the Secretary of Agriculture, after hearing, is final if in accordance with law. To test whether such ruling is "in accordance with law" the handler may bring the Secretary's action for review before the appropriate district court. But the very section which gives the handler access to the Secretary of Agriculture for administrative relief and opportunity for review of his determination provides that proceedings pending on such petition "shall not impede, hinder or delay the United States or the Secretary of Agriculture from obtaining relief" under Section 8a(6) of the Act. That section vests the district courts with jurisdiction to restrain violations and specifically to enforce orders.

The sections of the statute which establish the procedure for review are:

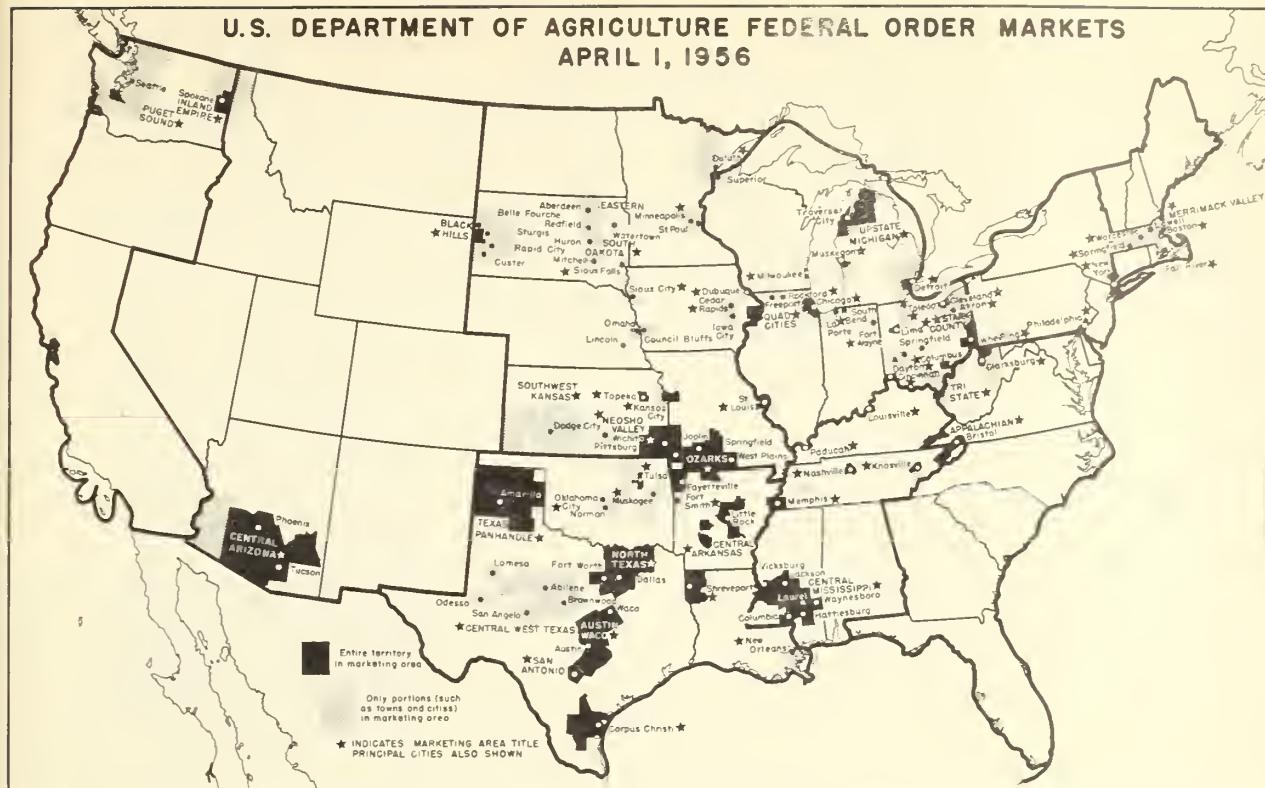
"8c (15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

"8c (15) (B) The District Courts of the United States (including the District Court of the United States for the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as in its opinion, the law requires. The pendency of proceedings instituted pursuant to this sub-section (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this sub-section (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)."

The Supreme Court of the United States held in *United States vs Ruzicka*, 329, U.S. 287, that these sections of the Act provide the exclusive means whereby an order provision or an obligation thereunder can be tested. In other words, a handler must pursue his administrative remedy according to the procedures established in the Act since the Act provides for a hearing and decision by the Secretary of Agriculture prior to review of the issue in the district court. The handler may not take his case directly to the courts, nor can he challenge the legality of an order provision or an obligation imposed upon him in an enforcement action. In the opinion of the Court the reason for this requirement is described:

"The situation before us indicates how disruptive it would be to allow issues that may properly come before a district court in a proceeding under § 8c (15) to be open for independent adjudication in a suit for enforcement under § 8a (6). After a presumably careful study by those technically equipped, a program was devised for the dairy farmers in one of the large areas of the country. The success of the operation of such Congressionally authorized milk control must depend on the efficiency of its administration. Promptness of compliance by those subject to the scheme is the presupposition of Order No. 41. Thus, definite monthly deadlines are fixed by the Order for every step in the program. In large measure, the success of this scheme revolves around a 'producers' fund which is solvent and to which all contribute in accordance with a formula equitably determined and of uniform applicability. Failure by handlers to meet their obligations promptly would threaten the whole scheme. Even temporary defaults by some handlers may work unfairness to others, encourage wider non-compliance, and engender those subtle forces of doubt and distrust which so readily dislocate delicate economic arrangements. To make the vitality of the whole arrangement depend on the contingencies and inevitable delays of litigation, no matter how alertly pursued, is not a result to be attributed to Congress unless support for it is much more manifest than we here find. That Congress avoided such hazards for its policy is persuasively indicated by the procedure it devised for the careful administrative and judicial consideration of a handler's grievance. It thereby safeguarded individual as well as collective interests. In the case before us, administrative proceedings were instituted before the Secretary of Agriculture and, apparently, are awaiting his action. Presumably the Secretary of Agriculture will give the respondents the rights to which Congress said they were entitled. If they are dissatisfied with his ruling, they may question it in a district court. The interests of the entire industry need not be disturbed in order to do justice to an individual case."

# U.S. DEPARTMENT OF AGRICULTURE FEDERAL ORDER MARKETS APRIL 1, 1956



## V. PRINCIPAL PROVISIONS OF A FEDERAL MILK ORDER

Since milk orders are legal instruments which obligate handlers to pay minimum prices for milk purchased from farmers, they must be detailed and explicit. There are about a hundred separate provisions in most milk orders which define who is obligated under the order and the exact terms of the obligation.

### Marketing area

The definition of the marketing area is the first important term of an order. The regulation of a milk order applies to the purchase of milk for sale in a designated marketing area. For example, the Chicago marketing area includes the surrounding Cities of Waukegan, Barrington, Elgin and Aurora, Illinois, and Hammond and Gary, Indiana, as well as smaller cities and towns in the adjacent territory. The North Texas marketing area includes the Cities of Dallas and Fort Worth and extends to smaller cities and towns in an area about 125 miles from the northern to the southern

boundary and about the same distance east and west.

The marketing area is designed to include all of an area where the same milk dealers compete with each other for sales of milk, and where such milk must meet essentially the same sanitary inspection standards. Since only handlers doing business within the defined area must pay the minimum prices it is important to draw the boundary line at points where there are relatively few route sales moving across the boundary. This objective has become increasingly difficult to attain in recent years as the fluid milk distribution business has expanded over wider areas, with considerable overlapping of delivery routes. Improved refrigeration and transportation and the paper package have encouraged this expansion of sales areas.

The problem of defining the marketing area is interwoven with the problem of whether an area should be regulated by one or two orders. The degree of relationship between markets determines whether the area is regulated by one order or a series

of orders. But there is not too much difference in the operation of a combined market program or two separate orders with major provisions closely related.

There are many instances in which handlers are distributing milk in more than one marketing area from the same plant. A decision must be reached in such cases to determine which order shall apply. Many orders provide that a handler shall be regulated by the order for the marketing area where he has the greatest Class I sales.

In some instances where handlers' routes overlapped in two markets in which supply conditions and health department requirements were similar the separate orders have been combined. The first merger of that type was the South Bend-La Porte, Indiana, market. In 1951 other mergers combined Suburban Chicago with Chicago, and Clinton, Iowa, with Quad Cities. Tulsa and Muskogee, Oklahoma, were merged in 1953.

### Handler

A handler is a person, individual or corporate, who handles milk subject to the regulation of an order. In general, he is a person who buys from farmers milk which is delivered to a city plant, or who purchases milk at a country receiving plant and transfers it to the city for sale in fluid products. The term handler applies to cooperative associations of producers as well as to proprietary handlers where such associations handle the milk of their members. If all handlers did business in the same way and if the marketing area boundary could be drawn at the exact point where route sales end, the definition of a handler and the application of order regulation would be relatively simple. All handlers would be completely regulated and pay the minimum established prices for milk bought from farmers.

The handling of milk for fluid markets, however, does not fit one mold, and the regulation, if it is not to stifle normal economic development, must recognize the characteristics of the industry. With the large interchange of milk between markets, it has become increasingly important to develop a plan of partial regulation for

handlers who do only a small part of their business in a particular marketing area. Thus handlers now are defined as either (1) fully regulated (they pay class prices for all milk purchased from farmers); (2) partially regulated (they pay a compensatory charge on Class I milk sold inside the marketing area); or (3) exempt (they report but make no payments). These handlers are usually defined in terms of the volume or percentage of their receipts disposed of in the area as Class I milk.

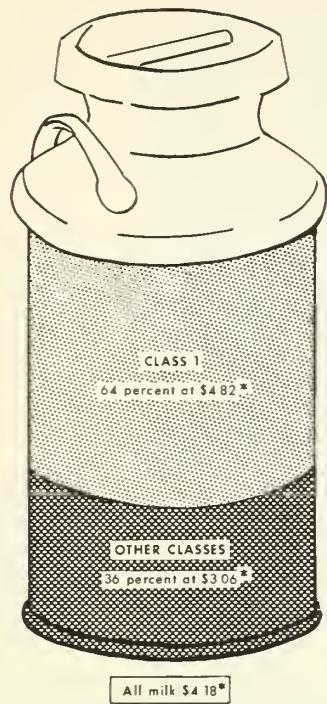
Fully regulated handlers are those whose principal business is handling milk for fluid sales in the marketing area. Partially regulated handlers are those whose principal business is either the production and sale of manufactured dairy products or fluid sales in an unregulated area. Such handlers are not identified closely with the regulated market and in some instances might experience by full regulation a competitive disadvantage with respect to the major part of their business which is done in the unregulated area. Sometimes fully regulated handlers receive some milk which is partially regulated. When a partially regulated supply of milk is disposed of in the area by a fully regulated handler, the reports and charges required on such milk are required to be made by the fully regulated handler. Exempt handlers may be small operators such as producer-handlers, and in some cases handlers who operate only one route in an area. Provision is sometimes made for exempt milk which includes emergency supplies needed by the fluid market under special circumstances.

### Producer

A producer is a dairy farmer who delivers to a fully regulated handler milk approved for sale as fluid whole milk in the regulated market.

### Classified Pricing

An order establishes prices by classes according to how the milk is used. Because milk is perishable and is subject to contamination there is extra cost of sanitary control on the farm, such as expense of refrigeration and necessity of frequent delivery. Because it is bulky there is high cost involved in hauling it to market. This makes



milk for fluid purposes cost more than milk for manufacturing purposes and a higher price must be paid to encourage its production. Also, sales of fluid milk are fairly even the year around, while production is seasonally higher in the spring than in the fall. When producers deliver enough milk in the fall to meet fluid consumption, they generally deliver more than is needed for fluid uses in the spring months. The milk used for fluid consumption is priced separately under a marketing order at one level, and the remainder is priced at a lower level in line with the value of the manufactured dairy products made from such milk.

Most of the 65 market orders in effect on March 1, 1956, established only two use classifications, (1) Class I, the primary fluid use and (2) Class II, all other products. Class I fluid uses generally include bottled products such as whole milk, flavored drinks, buttermilk, concentrated milk and other fluid milk products which must be produced from milk approved by local health authorities. In most markets fluid use also includes sweet and sour cream sold for consumption as cream.

The method of accounting for milk in the products in which it is used affects the decision on the appropriate number of classes. Where the volume of milk accounted in each class is determined primarily on the basis of the milk equivalent of the butterfat used, fluid cream is usually included in Class II even in markets which require its production be from approved milk only. The applicable class price expressed in terms of milk used in cream reflects in such cases the lower value of the skim milk remaining after cream separation provided such skim milk is used in manufactured products.

The classification of milk not required for fluid use varies from market to market and from time to time in the same market. In general the more milk there is to handle in a market the more classes of use are needed. When the amount of reserve milk is small it can often be absorbed in the higher-value manufacturing uses. This depends, of course, on the market facilities for processing milk in manufactured dairy products.

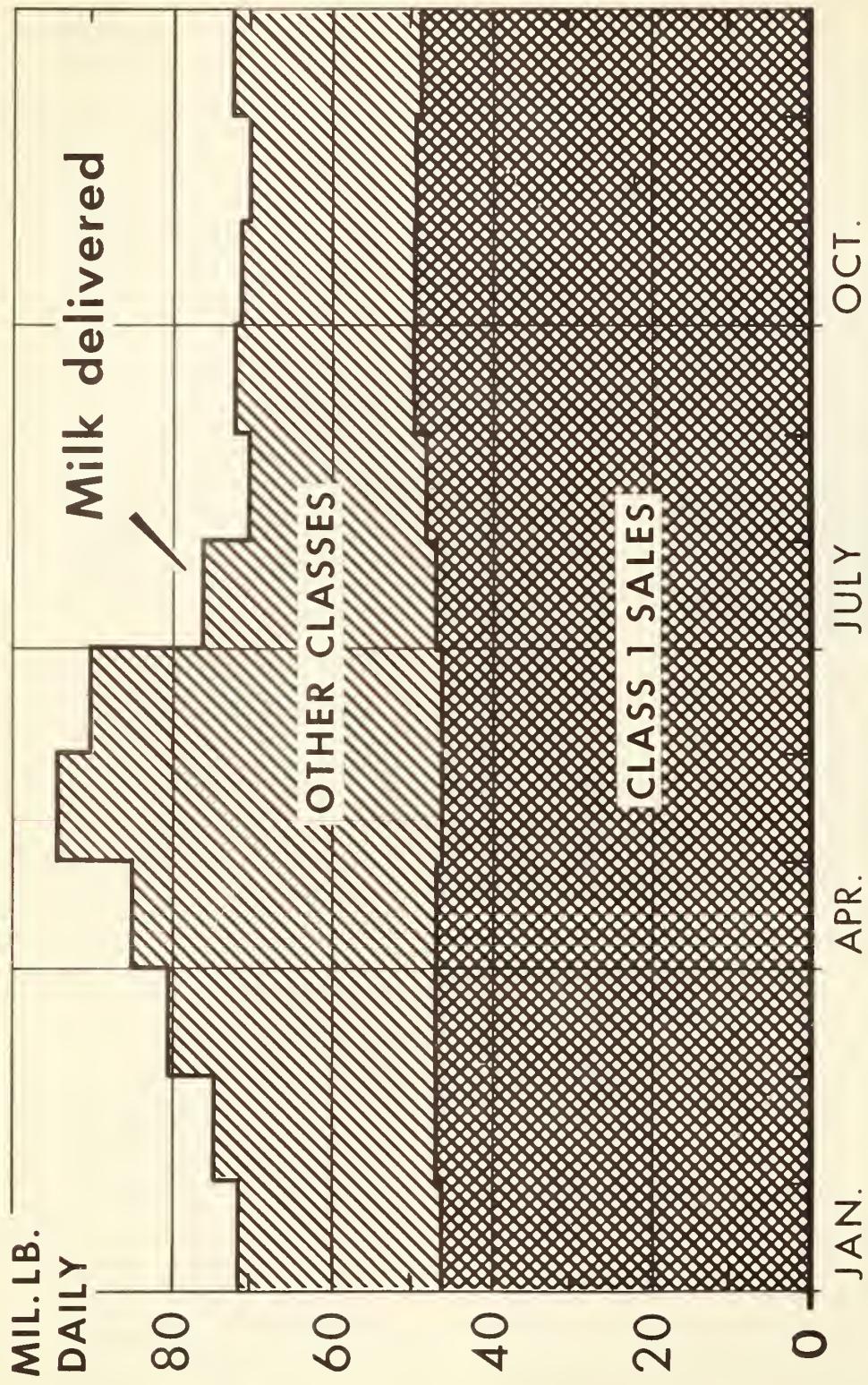
Freight is an important factor in determining the classification of milk in various products. The higher freight cost incident to transporting the more bulky dairy products is the principal contributor to the higher value of such products in markets more distant from the milk producing regions of the country where milk is used primarily for manufacturing dairy products. It is also important to consider the freight factor in grouping products into classes in order to prevent encouragement of the development of unnecessary manufacturing facilities for making dairy products.

### Levels of Class Prices

The policy to be followed in pricing milk under Federal milk orders was established by the Congress and is stated in the Agricultural Marketing Agreement Act. The Act directs the Secretary of Agriculture to establish milk prices which reflect certain economic factors and assure a sufficient quantity of pure and wholesome milk and are in the public interest.

The considerations involved in establishing Class I prices and other class prices, and the resulting effect upon uniform prices to producers, must be appraised in the light of the declared policy. Each price makes its contribution to the overall objectives.

# MILK SALES BY CLASSES, 1955



U. S. DEPARTMENT OF AGRICULTURE

NEG. 3384-56 (7)

AGRICULTURAL MARKETING SERVICE

Milk delivered by producers to handlers at prices set by 53 Federal orders varied from 95 million pounds daily in May 1955 to 70 million pounds in November. Daily average sales of Class I milk varied only from 46 to 50 million pounds in the 12 month period.

## Class I Prices

The primary standard for establishing Class I prices under the Act is the concept of equating the supply with the demand for milk in the marketing area. The "price of feeds, the available supplies of feeds, and other economic conditions" referred to in the Act are taken into account as they affect prospective market supply and demand conditions. The "public interest" is served by an adequate supply in terms of a reasonable price.

Formula pricing plans have been developed to establish and maintain Class I prices in accordance with these objectives. With rapidly changing price levels for other commodities and frequent shifts in supply and demand conditions in the market, some mechanism for achieving timely adjustments to changing market situations is necessary. Prices related to well known measures of changing economic conditions in pricing formulas have proved helpful in achieving such adjustments.

Many factors affect the production and sale of milk in fluid milk markets. Many of these are not measurable directly, but some of the more important factors are reflected in price series or indexes which are published regularly by government agencies. Formula pricing has been developed on a local or regional basis for one market or a group of closely related markets to reflect the factors which are considered most important in the particular market or region and for which statistical measures can be obtained.

The Class I formulas in current use are of two general types. In certain markets "economic formulas" relate fluid milk prices to selected economic factors. For example, in the New England markets these factors relate the milk price to certain costs of production, to changes in per capita disposable income in New England, and changes in the general level of wholesale prices of about 2,000 commodities.

In most other markets, so-called "manufacturing milk formulas" are used. Formulas of this type relate the price of Class I milk to market prices of manufactured dairy products or the value of milk for

manufacturing purposes. Specified differentials are added to manufacturing values to account for the additional cost of producing milk inspected for fluid use and the other special economic conditions which influence prices for milk in city markets. These added differentials are designed to balance the supply and demand for inspected milk in the regulated market.

Although formulas of these types are effective in bringing about many of the price changes needed in fluid milk markets, developments in the production of milk and market sales often require changes in the relationships between milk prices and the selected formula factors. An indicator which has helped to call attention to the need for such adjustments in pricing methods is the comparison of Class I sales with the total supply of producer milk available in a current period, as compared to some normal or standard relationship of Class I sales to supply.

In recent years, many of the Class I pricing formulas have been amended to incorporate such an indicator which operates automatically to reduce the Class I price when supplies are excessive, and to raise the Class I price when supplies are inadequate in relation to market requirements. These automatic provisions have been termed "supply-demand adjusters."

In some regions where a single pattern of Class I prices appears to be appropriate the Class I prices for a number of markets are calculated in terms of one supply-demand adjuster. The adjuster may be computed in terms of the combined receipts and Class I sales in all markets of the region or in terms of the principal market whose price tends to dominate the region.

The level of Class I price in any market generally cannot exceed for any length of time the cost of buying the milk in another supply area and transporting it to the consuming market. If a price advantage exists long enough for handlers to recognize the advantages of another supply, they will change their buying arrangements. One of the most important guides to the proper level of Class I prices in any given market is this cost of alternative supplies.

## Other Class Prices

All milk used in products which must be derived from fully approved milk to be sold to consumers in a regulated market is usually included in Class I. However, because of differences in accounting systems, more than one class may be established for milk used in such products. In Chicago, where the volume of milk in each class is determined primarily on the basis of milk equivalent of butterfat used, fluid cream and ice cream which must be derived from fully approved milk are in Class II. The Class II price reflects the lower value of the skim milk contained in the whole milk equivalent for which the handler is charged. The Class II price reflects the value of such skim when it is used in manufactured dairy products.

In Kansas City where the skim milk and butterfat components of each class are accounted separately, fluid cream is classified in Class I according to its product weight. The skim milk derived from the same 100 pounds of milk is priced in Class I if it is disposed of in fluid sales and in Class II if it is manufactured.

In establishing class prices for milk made into manufactured dairy products the prices paid by unregulated handlers for milk disposed of in similar dairy products are taken as a guide to the value of such milk in fluid markets.

The volume of the reserve and the organization of the market for disposing of this milk varies considerably from market to market. For this reason the level of prices which will contribute to orderly marketing in one area may be somewhat different from the prices needed in another.

Generally, however, the price is established at the level of competitive prices paid producers at unregulated manufacturing plants, unless there is a clear indication that such prices are not reasonable.

In determining the level of reserve milk prices which will produce orderly marketing, it is important that handlers in fluid milk markets should not be unduly encouraged to engage in manufacturing operations, either by establishing prices more attrac-

tive than the competitive price for manufacturing milk, or by making the handling of reserve supplies of milk within the fluid market appear more profitable than the handling of milk for fluid sales.

Reserve milk in Federal orders is priced by one of two general types of formulas: (1) formulas based on manufactured dairy product prices, or (2) formulas based on prices paid for milk by unregulated manufacturing plants. The two types of formulas differ only in mechanics, since each is designed to relate the order reserve milk price to the approximate prices being paid by unregulated manufacturing plants for milk made into dairy products.

## Producers Price Returns

Because different prices apply to milk disposed of in the several classes, a method of pooling, or distributing the total returns from sales of milk among producers at uniform price is used in conjunction with classified pricing. The Act provides for a choice of two methods of pooling returns to producers. One is the market-wide pool, the other is the individual-handler pool. Under a "market-wide" pool, the total money value of all milk delivered by all producers to all handlers (pounds of milk in each class, multiplied by the minimum class prices and usually adjusted for butterfat and location differentials) is combined in one pool and the pool is divided by the total amount of producer milk which is priced. Then all producers are paid the same "uniform" or blend price per hundredweight for their milk shipments. The uniform price also is adjusted for variations in the butterfat content of the individual producer's milk and other specified differentials. In an "individual-handler" pool, the same computations are made in arriving at each handler's value of milk, and all producers supplying the particular handler are paid the same "uniform" or blend price per hundredweight (which also is adjusted for butterfat variations and other specified differentials). Under the latter type of pool, the proportion of milk used in the different classes varies among handlers and producers supplying one handler will receive a uniform price which differs from that paid producers supplying other handlers in the market.

Federal order markets in which Class I price is determined by specified types of formulas, April 1, 1956

Market	Manufacturing milk value	Economic index	Automatic supply-demand factor	Market	Manufacturing milk value	Economic index	Automatic supply-demand factor
Akron-----	X-----	-----	1 X-----	Muskegon-----	X-----	-----	-----
Appalachian-----	X-----	-----	1 X-----	Nashville-----	X-----	-----	X
Austin-Waco-----	X-----	-----	1 X-----	Neosho Valley-----	X-----	-----	1 X
Black Hills-----	X-----	-----	-----	New Orleans-----	X-----	-----	X
Boston-----	X-----	X-----	-----	New York-----	-----	X	X
Cedar Rapids-Iowa City-----	X-----	-----	1 X-----	North Texas-----	X-----	-----	X
Central Arizona-----	X-----	-----	1 X-----	Oklahoma City-----	X-----	-----	X
Central Arkansas-----	X-----	-----	1 X-----	Omaha-Lincoln-Council Bluffs Ozarks-----	X-----	-----	1 X
Central Mississippi-----	X-----	-----	1 X-----	Paducah-----	X-----	-----	-----
Central West Texas-----	X-----	-----	1 X-----	Philadelphia-----	-----	X	X
Chicago-----	X-----	-----	1 X-----	Puget Sound-----	-----	-----	-----
Cincinnati-----	X-----	-----	1 X-----	Quad Cities-----	X-----	-----	-----
Clarksburg-----	X-----	-----	1 X-----	Rockford-Freeport-----	X-----	-----	1 X
Cleveland-----	X-----	-----	1 X-----	St. Louis-----	X-----	-----	X
Columbus-----	X-----	-----	1 X-----	San Antonio-----	X-----	-----	1 X
Corpus Christi-----	X-----	-----	1 X-----	Shreveport-----	X-----	-----	-----
Dayton-Springfield-----	X-----	-----	1 X-----	Sioux City-----	X-----	-----	-----
Detroit-----	X-----	-----	1 X-----	Sioux Falls-Mitchell-----	X-----	-----	-----
Dubuque-----	X-----	-----	1 X-----	South Bend-LaPorte-----	X-----	-----	X
Duluth-Superior-----	X-----	-----	1 X-----	Southwest Kansas-----	X-----	-----	-----
Eastern South Dakota-----	X-----	-----	1 X-----	Springfield, Mass-----	-----	X	-----
Fall River-----	-----	-----	1 X-----	Stark County, Ohio-----	X-----	-----	1 X
Fort Smith-----	X-----	-----	1 X-----	Texas Panhandle-----	X-----	-----	-----
Fort Wayne-----	X-----	-----	1 X-----	Toledo-----	X-----	-----	X
Inland Empire-----	X-----	-----	1 X-----	Topeka-----	X-----	-----	1 X
Kansas City-----	X-----	-----	1 X-----	Tri-State, Ky.-Ohio-W. Va-----	X-----	-----	X
Knoxville-----	X-----	-----	1 X-----	Tulsa-Muskogee-----	X-----	-----	X
Lima-----	X-----	-----	1 X-----	Upstate Michigan-----	X-----	-----	1 X
Louisville-----	X-----	-----	1 X-----	Wheeling-----	X-----	-----	-----
Memphis-----	X-----	-----	1 X-----	Wichita-----	X-----	-----	-----
Merrimack Valley-----	-----	-----	1 X-----	Worcester-----	-----	X	X
Milwaukee-----	X-----	-----	1 X-----	-----	-----	-----	-----
Minneapolis-St. Paul-----	X-----	-----	1 X-----	-----	-----	-----	-----

<sup>1</sup> Class I price is tied to price in another market which has a supply-demand factor.

Compiled by the Dairy Division, A.M.S.

Annual Average Class I and Producer Blend Prices<sup>1</sup> Under Federal Milk Orders Compared with  
 Prices Under the Chicago Federal Milk Order Applicable to Plants at Shawano, Wisconsin,  
 Plus Estimated Cost<sup>2</sup> of Transporting Milk from Shawano Area to the Designated Market,  
 1955

Market or principal city	Distance from Shawano area	Estimated Freight	Class I Price	Producer Blend Price	Price compared to Shawano plus freight	
					Class I	Blend
<b>NEW ENGLAND</b>						
Boston (201-210 m.z.)....	1,220	<sup>3</sup> 1.82	5.32	4.30	-0.08	-0.85
Lowell, Mass.....	1,228	2.22	5.84	5.40	+.04	-.15
Springfield, Mass.....	1,120	2.02	5.84	5.33	+.24	-.02
Worcester, Mass.....	1,175	2.12	5.84	5.49	+.14	+.04
Fall River, Mass.....	1,247	2.26	6.13	5.98	+.29	+.39
<b>MIDDLE ATLANTIC</b>						
New York (201-210 m.z.)..	1,050	<sup>3</sup> 1.52	5.20	3.96	+.10	-.89
Philadelphia, Pa.....	980	1.76	5.34	4.77	0	-.32
<b>SOUTH ATLANTIC</b>						
Huntington, W. Va.....	684	1.23	4.63	4.27	-.18	-.29
Bristol, Tenn.....	842	1.51	5.06	4.92	-.03	+.08
<b>EAST NORTH CENTRAL</b>						
<u>Eastern Group</u>						
Cleveland, Ohio.....	570	.97	4.48	4.11	-.07	-.19
Canton, Ohio.....	582	1.05	4.46	4.18	-.17	-.20
Muskegon, Mich.....	385	.70	4.25	3.98	-.03	-.05
Detroit, Mich.....	490	.88	4.40	4.05	-.06	-.16
Toledo, Ohio.....	450	.81	4.31	4.14	-.08	0
Lima, Ohio.....	442	.80	4.16	3.90	-.22	-.23
Dayton, Ohio.....	501	.90	4.31	4.00	-.17	-.23
Columbus, Ohio.....	530	.96	4.29	4.09	-.25	-.20
Cincinnati, Ohio.....	510	.92	4.56	4.06	+.06	-.19
<u>Western Group</u>						
Fort Wayne, Ind.....	380	.70	4.26	3.85	-.02	-.18
Milwaukee, Wis.....	150	.28	3.76	3.68	-.10	+.07
Rockford, Ill.....	220	.41	3.82	3.76	-.17	+.02
Chicago (55-70 m.z.)....	230	<sup>3</sup> .29	3.80	3.55	-.07	-.07
South Bend, Ind.....	300	.58	4.00	3.78	-.16	-.13
<b>WEST NORTH CENTRAL</b>						
<u>Northern Group</u>						
Duluth, Minn.....	150	.28	4.22	3.68	+.36	+.07
Minneapolis, Minn.....	222	.41	3.79	3.64	-.20	-.10
Dubuque, Iowa.....	260	.49	3.96	3.54	-.11	-.28
Cedar Rapids, Iowa.....	331	.63	3.92	3.50	-.29	-.46
Rock Island, Ill.....	335	.64	4.06	3.61	-.16	-.36
Sioux Falls, S. D.....	244	.45	4.33	4.01	+.33	+.23
Sioux City, Iowa.....	280	.53	4.48	4.17	+.37	+.31
Omaha, Nebr.....	370	.68	4.41	4.08	+.15	+.07
Rapid City, S. D.....	611	1.10	5.16	5.10	+.48	+.67

See footnotes at end of table.

Annual Average Class I and Producer Blend Prices<sup>1</sup> Under Federal Milk Orders Compared with  
 Prices Under the Chicago Federal Milk Order Applicable to Plants at Shawano, Wisconsin,  
 Plus Estimated Cost<sup>2</sup> of Transporting Milk from Shawano Area to the Designated Market,  
 1955--Continued

Market or principal city	Distance from Shawano area	Estimated Freight	Class I Price	Producer Blend Price	Price compared to Shawano plus freight					
					Class I	Blend				
<b>WEST NORTH CENTRAL--Continued</b>										
<u>Southern Group</u>										
St. Louis, Mo.....	520	0.94	4.24	4.09	-.28	-.18				
Springfield, Mo.....	600	1.08	4.01	3.74	-.65	-.67				
Kansas City, Mo.....	460	.82	4.36	4.04	-.04	-.11				
Wichita, Kansas.....	684	1.23	4.73	4.28	-.08	-.28				
Topeka, Kansas.....	503	.90	4.36	4.11	-.12	-.12				
Pittsburg, Kansas.....	590	1.06	4.30	3.92	-.34	-.47				
Dodge City, Kansas.....	815	1.47	4.73	4.35	-.32	-.45				
<b>EAST SOUTH CENTRAL</b>										
Louisville, Ky.....	520	.94	4.40	4.06	-.12	-.21				
Paducah, Ky.....	600	1.08	4.33	4.23	-.33	-.18				
Knoxville, Tenn.....	782	1.42	4.84	4.75	-.16	0				
Nashville, Tenn.....	670	1.20	4.29	3.98	-.49	-.55				
Memphis, Tenn.....	770	1.40	4.70	4.51	-.28	-.21				
Jackson, Miss.....	983	1.76	5.27	4.88	-.07	-.21				
<b>WEST SOUTH CENTRAL</b>										
<u>Northern Group</u>										
Fort Smith, Ark.....	778	1.42	4.84	4.56	-.16	-.19				
Tulsa, Okla.....	770	1.40	4.55	4.11	-.43	-.62				
Oklahoma City, Okla.....	860	1.54	4.89	4.46	-.23	-.41				
<u>Southern Group</u>										
New Orleans (61-70 m.z.)...	1,180	<sup>3</sup> 1.99	5.78	4.80	+.21	-.52				
Dallas, Texas.....	970	1.74	5.36	5.01	+.04	-.06				
San Antonio, Texas.....	1,195	2.17	5.80	5.74	+.05	+.24				
Abilene, Texas.....	1,179	2.13	5.61	5.37	-.10	-.09				
<b>PACIFIC</b>										
Seattle, Wash.....	1,660	( <sup>5</sup> )	4.74	4.08	-----	-----				

<sup>1</sup> Per 100 pounds of milk containing 3.5 percent butterfat, fob market, except as indicated.

<sup>2</sup> Mileage is shortest highway distance from either Shawano or Minneapolis. Rates used are from a schedule quoted by a dairy transport firm operating in Wisconsin and apply to 27,500 pound minimum loads. Federal transportation tax is included.

<sup>3</sup> Rate reduced by local cost of transportation, computed from same schedule: Chicago and New Orleans, 14 cents; New York and Boston, 38 cents.

<sup>4</sup> From Shawano.

<sup>5</sup> Not available.

Computed by the Dairy Division, A.M.S.

Type of pool in each Federal milk order market where base-excess price plans were used April 1, 1956

Market	Individ ual handler pool	Market wide pool	Base- excess plan	Market	Individ ual handler pool	Market wide pool	Base- excess plan
Akron-----	X	---	---	Muskegon-----	---	X	X
Appalachian-----	X	---	X	Nashville-----	---	X	X
Austin-Waco-----	X	---	X	Neosho Valley-----	---	X	X
Black Hills-----	---	X	X	New Orleans-----	---	X	X
Boston-----	---	X	---	New York-----	---	X	---
Cedar Rapids-Iowa City-----	---	X	---	North Texas-----	---	X	X
Central Arizona-----	---	X	---	Oklahoma City-----	---	X	X
Central Arkansas-----	---	X	---	Omaha-Lincoln-Council Bluffs-Ozarks-----	---	X	---
Central Mississippi-----	---	X	X	Paducah-----	---	X	---
Central West Texas-----	---	X	X	Philadelphia-----	---	X	---
Chicago-----	---	X	---	Puget Sound-----	---	X	---
Cincinnati-----	---	X	---	Quad Cities-----	---	X	---
Clarksburg-----	---	X	X	Rockford-Freeport-----	---	X	---
Cleveland-----	---	X	X	St. Louis-----	---	X	---
Columbus-----	---	X	---	San Antonio-----	---	X	---
Corpus Christi-----	X	---	---	Shreveport-----	---	X	---
Dayton-Springfield-----	---	X	---	Sioux City-----	---	X	---
Detroit-----	---	X	---	Sioux Falls-Mitchell-----	---	X	---
Dubuque-----	---	X	---	South Bend-LaPorte-----	---	X	---
Duluth-Superior-----	---	X	---	Southwest Kansas-----	---	X	---
Eastern South Dakota-----	X	---	---	Springfield, Mass-----	---	X	---
Fall River-----	X	---	---	Stark County, Ohio-----	---	X	---
Fort Smith-----	---	X	---	Texas Panhandle-----	---	X	---
Fort Wayne-----	---	X	---	Toledo-----	---	X	---
Inland Empire-----	---	X	X	Topeka-----	---	X	---
Kansas City-----	---	X	X	Tri-State, Ky.-Ohio-W. Va-----	---	X	---
Knoxville-----	---	X	X	Tulsa-Muskogee-----	---	X	---
Lima-----	X	---	---	Upstate Michigan-----	---	X	---
Louisville-----	---	X	---	Wheeling-----	---	X	---
Memphis-----	---	X	---	Wichita-----	---	X	---
Merrimack Valley-----	---	X	---	Worcester-----	---	X	---
Milwaukee-----	---	X	X				
Minneapolis-St. Paul-----	---	---	---				

The individual-handler type pool operates satisfactorily in markets which are relatively short of milk or where the reserve is distributed evenly among producer groups. Where supplies are short, this type of pooling serves as a means of allocating the available supply among handlers in relation to their fluid sales. The handler with a higher proportion of Class I sales would pay a higher uniform or blend price. That would tend to attract producers from the handler who had a higher proportion in the manufacturing value uses.

Market-wide pools on the other hand are best adapted to markets where reserve supplies are unevenly distributed among producer groups. In many markets, particularly the larger ones, the reserve supply of milk can be more efficiently handled by consolidating the reserve supply in plants most distant from the market. Often one reserve plant where milk products are manufactured much of the year will provide the necessary fluid milk for more than one handler in the short production months. This specialization of function would result in lower prices at such a plant under an individual handler pool than those paid by handlers who specialize in fluid sales. In a market-wide pool all approved producers who supply the market regularly, even if only in the short supply period, are paid uniformly according to the total market utilization.

The Act provides that cooperative associations may blend their receipts in all markets:

"8c 5f. Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection for such milk."

## Producer Settlement Fund

Some handlers have mostly Class I milk (highest price). Other handlers may have a larger proportion of their receipts used for manufacturing purposes. This results in wide variation among handlers in the average utilization value of their milk. Under a market pool order each handler is required to pay at least the uniform price to all producers from whom he purchases milk. The difference between what the handler pays producers and the utilization value of his milk is paid to or from a "Producer Settlement Fund." Handlers with higher-than-average utilization pay the difference into this fund. This money is paid out to handlers with lower-than-average utilization. This results in "equalization" of cost of milk among all handlers and a uniform price to producers.

## Inter-order Obligations

The market-wide pooling system applies under an order where all handlers are fully regulated. But actual market situations (as indicated in the discussion of problems associated with defining a marketing area) do not always fit this simple pattern.

For example, there is the problem of determining how to establish the pool obligation of a handler who does business in more than one Federal order market. Since the class prices in adjacent Federal order markets are closely aligned, it is unnecessary in most cases to make any special provision other than a determination that such handler pay the class prices and account to the equalization fund in the market where he has the greater fluid milk sales.

In some markets, particularly where the location of a handler's plant would give him a particularly favorable price relative to other handlers in one of the marketing areas, it has been necessary to provide for partial pooling of the handler in both Federal order markets. In these cases, he is required to pay class prices and account for all of his milk in the market pool where he does the most business. He may also

make an equalization payment into the market pool where he does a secondary business, similar to the equalization payment made by other handlers in the market.

Such a payment is made on the quantity of Class I milk sold in the secondary market, and is at a rate equal to the difference between the Class I price in that market and the Class I price at which he accounted to the pool in the market of his primary business.

## Compensatory Payments

Payments into the producer settlement fund are sometimes required on partially regulated milk in order to maintain uniformity in prices paid for milk disposed of in the regulated fluid market. These payments are commonly known as compensatory payments. They are necessary to discourage certain types of handlers from joining a market pool to draw out funds without providing a supply of milk for the fluid market. Such payments are necessary in some instances to meet the legal requirement that the minimum class prices for milk be uniform among handlers.

Partially regulated handlers who do only a small part of their business in a federally regulated market make compensatory payments into the producer settlement fund. This payment is required instead of full regulation and the payment of minimum class prices on all milk purchased from farmers.

Historically, this type of payment by partially regulated handlers first applied to the milk which producer-handlers sold to pool handlers. Producer-handlers are generally exempted from the pricing and pooling provisions of an order because their operations are small and the regulation of a number of small handlers raises the cost of order administration excessively. On the other hand, because producer-handlers, who normally have relatively high fluid sales, were exempted from equalization, it did not appear reasonable that they should receive the market blend price for the excess milk they sold to other handlers. Therefore, in most markets, it was generally accepted at an early date that if producer-handlers were exempted from equalization, a handler who purchased milk from an exempt producer-handler had

to account to the pool for the difference between the Class I price and the manufacturing class price.

In the early years of the program, many instances occurred in which a small quantity of a distributor's milk inadvertently found its way into a regulated market. According to the order practices of those days, the distributor became subject to full regulation of all of his milk and incurred a considerable obligation under the order. As the order program was developed and refined, however, it was recognized that the system which had been applied to producer-handlers might be extended to those handlers selling a substantial portion of their milk outside of the marketing area. The system of partial regulation relieves such handlers of the obligation to pay minimum class prices for the milk they receive from farmers and which does not enter the regulated market. Fully regulated handlers pay minimum class prices for all milk received regardless of whether it is sold inside or outside the marketing area. Equalization or compensatory charges are assessed to eliminate any price advantage the partially regulated handler would have over a fully regulated handler on milk sold inside the regulated market.

Compensatory charges are adopted only where the hearing evidence shows that the opportunity to purchase supplies of milk at distress prices is likely to disturb the regular market supply. Some markets are close to other cities from which milk could be purchased temporarily at distress prices. Some of these markets have not yet shown the need for a compensatory charge because the handlers prefer to obtain their full supply of milk from regular suppliers. If they need a larger supply, they make a more permanent arrangement for a new regular source of supply and that source becomes fully regulated.

The amount of the compensatory payment varies with the market circumstances but is designed to approximate the difference between the market Class I price and the level at which milk can be purchased on an opportunity cost basis. Where reserve supplies of milk are available from other fluid markets, this opportunity cost is the general level of the price paid for manufacturing

milk. If supplies are short the opportunity price will be as high or higher than the local market Class I price. In periods of short supplies, therefore, the compensatory payment is not usually needed.

### Allocation of Producer Milk to Classes

Whenever producer milk is intermingled in the fluid sales business or in the plant operations with milk or dairy products from other sources it is necessary to have some rule for determining the use of producer milk versus such "other source" milk. Allocation for price determination does not depend necessarily on the use of a specific lot of milk in a particular product. The common formula for allocation is to assign "other source" milk first to the lowest price class and then in sequence to higher priced classes. Or the rule may be applied in the converse by allocating producer milk first to Class I to the full amount of Class I use.

The general formula for allocating producer milk to the highest-priced available uses has several variations. Each market order contains detailed instructions for the assignment of producer milk to class uses.

### Seasonal Pricing Plans

Since the normal pattern of milk production results in a greater supply during the spring and early summer than during the remainder of the year, various plans of seasonal pricing have been used to encourage the production of milk in a more even monthly pattern. The incentive for a more uniform pattern of milk production is provided in Federal milk orders by seasonally variable Class I prices, seasonal price adjustment funds and base-excess producer payment plans. These seasonal pricing plans may be used singly or together.

The Class I pricing formula may provide a schedule of month-to-month price changes ranging from a low in May or June to a high- usually in November.

Payments may be withheld from producers in the flush production season and such funds paid in the short supply season according to deliveries in that period. This system has been called the "Louisville payment plan."

A seasonal pricing plan which relates the payment more directly to the individual producer's seasonal pattern of deliveries is the base-excess plan. Under such a plan the producer establishes a base during the normally short production season, equal to the average daily quantity of milk he delivers. During the following flush production season he is then paid the base price for quantities of milk delivered up to the amount of his base, and a lower price for any additional milk delivered. The total payments for base and excess milk equal the total payments which handlers are required to pay for the milk at the class prices.

The exact terms of base plans vary in different orders but provide generally the establishment of bases in a four to six-month fall and winter period. Payments are then made to producers for base and excess milk in periods ranging from 3 to 12 months following the base-forming period. Producers have an opportunity to establish a new base each year and in some markets there are provisions for developing a base for producers who enter the market after the base-forming period.

### Differentials

The actual class prices handlers pay and the prices producers receive for milk are always adjusted by butterfat differentials and generally by location differentials. The butterfat differentials are quoted in terms of cents per 100 pounds and apply to each "point" (one-tenth of one percentage point) variation from the basic test at which prices are announced. Prices under the various Federal orders are determined and announced for a specified butterfat content of milk.

In many of the larger milk markets the milk supply is assembled in a system of so-called country plants which are located in the area of production at varying distances from the processing distributing plants. The milk is cooled at these country plants and then transported in tank cars or tank trucks to the city processing plants. Some processing and distributing plants are also located in the production area at considerable distance from the principal center of consumption.

The minimum prices established by Federal milk orders are normally applicable at the plant at which milk is first received. The pricing plans provide for zone differentials by which the market price is adjusted to determine a zone price for each plant. The charge for hauling from the farm to the first plant at which the milk is received is negotiated between the dairyman and the hauler who is sometimes also the milk handler.

The present system of location differentials and the pricing point are being studied by producers and handlers in many markets as the system relates to the assembly of milk from farm bulk tanks. As this change in marketing develops some changes probably will be required in the present plan of location pricing.

## VI. ADMINISTRATION OF FEDERAL MILK ORDERS

The administrative functions are carried out in the milk order program by the Dairy Division (responsible for program development and supervision of local administration), and the Market Administrators (each responsible for carrying out the terms of a specific order).

### Dairy Division Operations

Specific duties and responsibilities of the Dairy Division are delegated to the Director by the Secretary of Agriculture. The Director has final authority under delegation to: Take all action necessary or appropriate in the administration of marketing orders, relating to the handling of milk and its products, approved by the Secretary in accordance with the provisions of the Agricultural Marketing Agreement Act of 1937, subject to limitations contained in the orders themselves, and in rules and regulations applicable thereto. Such action includes, but is not limited to, the following:

(a) To supervise the operations and activities of any market administrator, committee member, or other agent or employee of any agency established under a marketing agreement or marketing order, and to require such agents or agencies to submit, from time to time,

such reports or other data as the Director determines to be necessary or appropriate.

(b) To direct such agents or agencies to take any action not inconsistent with the provisions of such marketing agreements or marketing orders, as the Director determines to be necessary or appropriate to accomplish the purposes and to secure the lawful and successful administration of any such marketing agreement or marketing order.

(c) To exchange information with State officials pursuant to memoranda of understanding between the Secretary and State officials.

(d) To exercise the following powers of the Secretary under Section 8d of the Agricultural Marketing Agreement Act of 1937:

(1) To find and determine what information is necessary to be furnished by handlers subject to regulatory orders to enable the Secretary to ascertain and determine the extent to which such regulatory orders have been carried out or have accomplished the declared policy of said act;

(2) To prescribe the forms of reports on which such information shall be furnished;

(3) To request handlers subject to regulatory orders to furnish the information determined to be necessary under (a) hereof; and

(4) To authorize and to direct other agents and employees of the Department of Agriculture to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control of any such party to such marketing agreement, or any such handler, from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such party or such handler, or of any subsidiary of any such party, handler, or person.

The supervision of Market Administrators' operations and activities is carried out in the Division by formal instructions and by close working relationship with each administrator's office through a marketing specialist assigned to each market. The Director of the Dairy Division has issued an instruction manual covering various aspects of the administration of milk orders, particularly those activities of Market Administrators' offices which are uniform throughout the system. In addition to the formal instructions Market Administrators are required to report from time to time on special phases of their activities, such as auditing techniques or methods of testing the accuracy of weights and butterfat tests, so that the Dairy Division can review and evaluate the standard of performance of the various phases of the administrative work in the different offices.

The expenditure of funds by Market Administrators, both for administrative purposes and for marketing services to producers, like other operations of the Market Administrator's offices, are supervised by the Dairy Division. Market Administrators are required to submit estimates of income and expenditures in specified accounts for each calendar year to the Dairy Division for approval prior to the beginning of the year to which the estimates apply. Assessment rates are adjusted whenever funds tend to accumulate in amounts exceeding operating expenses for about 6 months, the period calculated to be necessary to liquidate an order operation in the event of termination.

The Program Appraisal and Audit Division of the Agricultural Marketing Service audits the records of Market Administrators' use of administrative and marketing service funds to determine whether the funds have been used in accordance with instructions of the Dairy Division.

The Civil Service Commission has ruled that Market Administrators and their employees are Federal employees and as such are subject to the Civil Service Act. The employees on the staffs of Market Administrators are classified as "Schedule A Federal Employees" under a ruling of the Civil Service Commission. When a position is covered by Schedule A it may be

filled without regard to Civil Service competitive registers. This means that the agency may recruit direct for the position instead of obtaining a certificate of eligibles from the Civil Service Commission. However, in such instances the agency must develop qualification standards for each job established and must conform with the regulations of the Civil Service Commission and of the Department with respect to appointments, promotions, reassignments, changes to lower grade, reduction in force, and separations for cause. The Executive order governing fair employment practices within a Federal establishment apply to Schedule A employees as well as other Federal employees. Provisions of the Veterans' Preference Act must be followed. Loyalty forms, application forms, oath of office, etc., must be obtained from new appointees, and personnel actions and reports prepared in strict compliance with Civil Service manuals and Departmental regulations.

The Dairy Division has developed and issued a salary and wage plan for Milk Market Administrators and their employees. In that plan, twenty-five grades are established, designating the base salary associated with each grade, the total range of salary, the size of each step, the number of steps within each grade, the frequency of changes or in-grade pay increases, the years to cover the entire range within each grade and the minimum length of service before being eligible to promotion to the next grade. A Market Administrator may not pay any employee more than is authorized by this wage and salary plan, or adjust an employee's pay at a faster rate.

The responsibility for recommending the terms and provisions of milk orders and describing their intent and purposes is delegated to the Dairy Division under the departmental organization and assignment of functions. Since the Division is responsible for recommending the adoption of the provision in the first instance, it is the logical office through which the initial interpretations of the provisions should be made in the process of order administration whereas the more formal procedures of review operate through other channels. The application of order provisions by Market Administrators which are referred to the Dairy

Division for review are usually subjects on which the Market Administrator and the handler or handlers affected by a ruling disagree, or which may lead to controversy. As a matter of practical operating procedure, the Market Administrator must assume that his understanding and application of the order provision is that intended by the Secretary unless the procedure is questioned by some other person. When the Administrator has any question concerning the application of a specific provision he requests advice of the Dairy Division in support of or in opposition to his tentative views in the matter.

## Market Administrator Operations

Each milk order is administered in the local area by an agency directed by a Market Administrator who is appointed by the Secretary of Agriculture.

The Market Administrator contacts handlers in the area and supplies them with forms on which to report their receipts and disposition of milk and payments to producers. He employs a staff to assist him in administering the order. One of the most important functions of the Market Administrator's office is the examination of books and records maintained by handlers to determine whether payments are made according to the terms of the milk order.

The powers and duties of the Market Administrator are prescribed in each order. A typical statement of the delegation of powers and duties to the market administrator is set forth in the Minneapolis-St. Paul, Minnesota, order (February 1, 1956) as follows:

§973.21 Powers. The market administrator shall:

- (a) Administer the terms and provisions of the order;
- (b) Receive, investigate, and report to the Secretary complaints of violations of the terms and provisions of the order;
- (c) Recommend to the Secretary amendments to the order; and
- (d) Make rules and regulations to effectuate the terms and provisions of the order.

§973.22 Duties. The market administrator shall perform all duties necessary to administer the terms and provisions of the order, including but not limited to, the following:

- (a) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Pay, out of the funds provided by §973.90, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office, except as provided by §973.91;
- (c) Keep such books and records as will clearly reflect the transactions provided for in the order and surrender the same to his successor or to such other person as the Secretary may designate;
- (d) Unless otherwise directed by the Secretary publicly disclose within 30 days such nonperformance becomes known to the market administrator, the name of any person who, within 20 days after the date on which he is required to perform such acts, has not (1) made reports pursuant to §973.30 or (2) made payments pursuant to §§973.80, 973.84, 973.86, and 973.87; and may at any time thereafter so disclose any such name if authorized by the Secretary.
- (e) Verify each handler's records and payments by inspection of such handler's records and the records of any other person upon whose utilization the classification of skim milk or butterfat for such handler depends;
- (f) Prepare and disseminate to the public such statistics and information concerning the operations under the order as he deems advisable and as do not reveal confidential information;
- (g) On or before the 5th day of each delivery period, mail to all handlers

and make public announcement of the Class I price computed pursuant to §973.53, and the butterfat differential computed pursuant to §973.56 (a) for the then current delivery period, and the Class II price computed pursuant to §973.54 and the butterfat differential computed pursuant to §973.56 (b) for the preceding delivery period; and

(h) On or before the 13th day after the end of each delivery period, mail to all handlers and make public announcement of the uniform price computed pursuant to §973.71, or the price for base milk computed pursuant to §973.72 whichever is applicable.

The Market Administrator must make day-to-day decisions regarding the application of the order's provision to a specific set of circumstances. Although the Market Administrator's duties do not include the issuance of official interpretations of a milk order in the sense that he has final authority to bind the Secretary by his interpretation of the order's terms and provisions, the administrative functions which he must perform require his continuous application of order provisions to specific situations. Since careful attention is given in the drafting of orders to expressing a clear statement of each provision, the market administrator can ordinarily carry out the administrative function by a mere reading of the order without any question of the provision's meaning. It is impossible, of course, to avoid all disputes with respect to the meaning of words and phrases. In actual practice the market administrator may have to indicate, in a specific situation, his idea of the meaning of the order's terms in order to proceed with the other directives.

Since the administrative duties of the Market Administrator are largely the verification of the payment of the required amounts by handlers, a large proportion of the staff which he employs are engaged in auditing handlers' books and records. Although the staff employed on specific duties varies from market to market depending on the total work load and the individual market circumstances, in most markets auditors make up 30 to 50 percent of all employees.

The audit program for verification of payments for milk required under a Federal milk order combines a check of physical units and financial transactions. The comparison of intake and output of physical units and the customary balance of financial receipts and expenditures complement each other in the audit system. The emphasis attached to one method or the other varies with the type of handling operation to be verified.

The auditor verifies by making comparisons of goods handled and financial records. He checks the payments made to producers, to other handlers, and to suppliers of various ingredients which may be mixed with dairy products or intermingled in the sales operations. He tests the records of sales to support the claimed disposition. In addition to an investigation of the specific accounts which deal with purchases and sales that have a direct relation to milk handling operations, the complete audit includes an examination of other financial accounts to determine whether any account not labeled milk may have actually been used to record milk purchases or sales.

The complete financial check is usually interspersed with the audit of production records. In the audit program it is customary to rely also on a physical check of the handlers product operations as a means of verifying the total plant receipts and output. In this check of physical units the receipts of milk are checked through the plant's production operations and balanced with the total recorded disposition.

The extent and type of the audit is adapted to the market and the handler in accordance with the terms of the orders and the records customarily kept. The Dairy Division reviews the auditing procedures from time to time to assure that adequate verification is accomplished without unnecessary expense.

### Current Developments Affecting Milk Orders

In the foregoing pages the Federal milk orders have been described in terms of past and present practices. As milk markets and marketing conditions have changed, the orders have been revised. The procedures under which milk orders are developed

are such that the impact of new marketing methods or other developments in the market can be publicly appraised. Public discussion and the exchange of views regarding marketing problems and their relation to the order program contribute to the solution of such problems. The complete and accurate information about supplies and sales of milk which is available in Federal order markets furnishes the material for better marketing decisions. With the facilities of the public forum and the confidence engendered by complete market information, producers and handlers, in cooperation with government representatives and specialists from state departments of agriculture and land grant colleges and universities are able to devise and put into effect improved systems of market pricing.

## New Marketing Methods

The farm bulk cooling tank is one important development in marketing milk. It has proved its value on the farm and in the marketing system. In some markets, conversion of most farms is already accomplished; in other markets, the expanded use of farm tanks is retarded only by delivery dates on equipment.

A number of administrative problems have developed with this new method of handling milk. In the Federal order programs the core of these administrative problems is the identification of the person to be held responsible for making specified payments to farmers.

In the procurement of milk from farm bulk tanks, the tank truck may serve also as a part of the distribution system. The milk produced by individual farmers which is commingled in the tank truck may be distributed to two or more plants. The multiple deliveries may be to plants of two handlers regulated under the same order, handlers regulated under different orders, or to both regulated and unregulated handlers. Any of these situations raises the question: "Who bought what from whom?"

But more significant in carrying out the over-all objectives of the order price program are the implications of this development in milk handling on pricing patterns. Since transportation is a large item of cost

in the handling of milk, any major reduction in transportation cost is certain to affect the relative value of milk at varying distances from primary consuming markets.

The bulk farm tank and tanker trucking direct from farm to market have an important potential for reducing total handling costs. There are offsetting factors, however--particularly in the conversion stages--which may prevent full realization of the cost saving. Until hauling routes can be established on an efficient basis, some producers may not benefit from the lower cost method of transportation. Until handlers make some saving in eliminating receiving capacity for can milk, their total cost may not be reduced.

In some instances there may be a need for adjustment of inter-market price relationships. Widespread use of this type of assembly for long hauls may make it necessary to revise the system now used for establishing prices f.o.b. plant. Under the present system, prices are established at the first point of delivery by farmers to a plant. The charge for hauling milk from the farm to the plant may be deducted provided the deduction is properly authorized.

Hauling rates in most markets vary now within narrow limits. The differences are often due to the location of the farm on a main highway or side road, the total volume shipped, and the extent of the hauler's service in loading milk at the farm. Since the equipment for hauling milk from farm to plant requires a relatively moderate investment, the field is usually competitive enough to maintain rates at reasonable levels.

But with the tank truck capable of a much longer haul there is the prospect that deliveries one day may involve a 20-mile haul and another day a 200-mile haul. The farmer's price for delivery at these widely separated points would be different under the present system; after deducting the hauling charge he might receive two different net farm prices. It is possible however that under such circumstances haulers may quote a per mile rate which would tend to return to producers about the same net farm price whether the milk was delivered to a nearby country plant or direct to the city market.

Changes are occurring in other areas of the marketing system. For example, the wider sales radius made possible by the increased use of the paper package is a development which creates problems in establishing regulated prices. Sales areas of adjacent markets tend to overlap as handlers' sales routes meet and cross. As in the case of bulk farm tanks, the immediate problems are administrative. Some decision has to be made as to where a handler will be regulated if his sales extend into two or more regulated markets.

Many orders now provide that such a handler be regulated in the market where he has the greatest Class I sales. This provision has been satisfactory in the markets where it has been used, but it could bring about some peculiar price results if a plant's sales were about evenly divided. Under the system of supply-demand provisions established separately for each market, a small shift in this handler's business could have supply-demand adjustments calling signals on the price in these two markets.

Uncertain price movements of this type have been limited in some orders by tying Class I prices for a number of markets to one calculated supply-demand adjuster. Such a technique appears suitable for markets which draw on a common supply area. Class I prices in Federal order markets of New England vary according to a supply-demand factor calculated on the basis of receipts and sales in four markets combined. In several Northern Ohio markets the supply-demand condition in the Cleveland market is used as the measure of price changes. The South Bend-La Porte, Milwaukee and Rockford-Freeport Class I prices move directly with the supply-demand adjuster in the Chicago area.

In some instances where handlers' routes overlapped in two markets in which supply conditions and health department requirements were similar, the separate orders were combined. The first merger of this type was the South Bend-La Porte, Indiana, market. In 1951, order mergers combined Suburban Chicago with Chicago and Clinton, Iowa, with Quad Cities. Tulsa and Muskogee, Oklahoma, were merged in 1953.

These are a few of the plans which have been advanced as a result of the broadening of sales areas. Similar problems are developing in other markets and the interrelationship of markets continues to present new problems.

### Growth of Interest in Federal Orders

With the expansion of the program, milk marketing problems are being studied on a national as well as local and regional basis. During the past three years, several national farm and dairy industry associations have devoted increasing attention to the program. The studies made by these and other interested groups have contributed greatly to the understanding and direction of the program.

The Federal milk orders are now so widespread throughout the country there are few major dairy producing or marketing areas where the term Federal milk order is unfamiliar. But the expansion has been so rapid that the information about the program has hardly kept pace with its growth.

The most comprehensive appraisal of the Federal order program was undertaken at the Department's request by a group of men who were intimately familiar with the practical problems of dairy marketing and the responsibilities to the public of a regulatory program of this type. This group of specialists from nongovernment fields reported on their study in October 1954. The report commended and endorsed the administration of the program. This group found the program had adapted itself successfully to a variety of economic conditions in the past and predicted that Federal orders would continue to serve their useful purpose in the future. They called attention to the effectiveness of the public hearing procedure in eliminating suspicion and misunderstanding regarding the fluid milk business.

The Federal milk order program has been studied also by the Department's research staff in connection with a study of all regulations which affect the movement and pricing of milk for fluid use. This study calls attention to the various ways in which the provisions of Federal

orders could be devised to bring about unwarranted economic disadvantage to certain groups, if proper precautions are not taken.<sup>1</sup>

Representatives of producers and handlers directly affected by milk orders and groups which are indirectly affected by the programs watch the proposals made in each area and keep the Department well acquainted with the possible implications of all proposals. The attention directed toward new and old ideas in the program by these people who are keenly interested in the program precludes any serious omissions in the government review of these matters.

The program is continuously being reappraised by groups and individuals with the results of such studies usually reported at public hearings. This report itself is another evidence of the interest and co-operative effort of organized producer and handler groups to improve the system of marketing milk for fluid markets under Federal milk orders.

## VII. INFORMATION NEEDED

The following text outlines broadly the information needed by the United States Department of Agriculture for consideration of a proposed Federal milk marketing order:

### I. Need for regulation.

#### A. Marketing problems.

1. Availability of information about market conditions.
2. Kinds of pricing plans used in the market and their effectiveness in promoting market stability.
3. Distribution of surplus among producer groups.
4. Source of market supplies and circumstances requiring use of milk from outside sources.

<sup>1</sup> Agricultural Marketing Service, "Regulations Affecting the Movement and Merchandising of Milk; A Study of the Impact of Sanitary Requirements, Federal Orders, State Milk Control Laws, and Truck Laws on Price, Supply, and Consumption." Marketing Research Report No. 98, USDA, June 1955.

#### 5. Existence of displaced producers or homeless milk.

### B. Price Problems.

1. Level of prices in relation to other markets.
2. Adequacy and dependability of local supplies as influenced by prices.
3. Disparity of prices among producers in the market.

### C. Bargaining problems.

1. The degree of confidence in the bargaining system.
2. Ability of cooperative associations to bargain effectively with all or certain handlers.

## II. Interstate Commerce.

- A. Description of sources of current and potential supplies by States.
- B. Description of distribution of milk and milk products with reference to State boundaries.
- C. General relationship of prices of milk in marketing area to prices and movements of milk and dairy products in interstate commerce.

## III. Marketing background.

- A. Names and addresses of handlers.
- B. Description of location and operation of plants which would be subject to regulation and which distribute milk or milk products in the area.

- C. Description of location and operation of plants which distribute milk or manufactured milk products in the area surrounding the proposed marketing area.

- D. Names and addresses of cooperatives.

### 1. Description of operation.

2. Copies of contracts with producer members and with handlers.
3. Proportion of milk in the market under contract.

- E. Regulation by State agencies.
1. Copies of laws and regulations.
  2. Activities in fixing producer and/or resale prices.
- IV. Marketing area.
- A. Character of marketing area.
    1. Location of urban centers.
    2. Population of marketing area by political subdivisions.
  - B. Competition among handlers in marketing area.
    1. Number of handlers.
    2. Size and kinds of operations of handlers.
    3. Extent to which same handlers meet in direct competition in marketing area.
      - a. Numbers of handlers selling at retail and wholesale in each town in the marketing area.
      - b. Names of towns in which handlers with most extensive routes operate.
  - C. Homogeneity of milk quality.
    1. Copies of health ordinances.
    2. Degree to which milk may be distributed freely throughout marketing area.
- V. Classification system.
- A. Description of classification systems in effect in marketing area.
  - B. Effect of health requirements on classification.
    1. Products which must be made from locally inspected milk.
    2. Products which, under limited conditions, may be made from other than locally inspected milk (specify conditions).
    3. Products which may be made from uninspected milk.
    4. Standardization or modification of milk.
      - a. With cream.
  - b. With skim milk.
  - c. With condensed or dried products.
  - d. Lowest test of whole milk sold.
5. Standardization or modification of cream.
  - a. Lowest percent butterfat in cream sold.
  - b. Use of condensed or dried products for standardizing cream.
  - c. Are mixtures of milk and cream sold.
6. Butterfat test of milk, cream and other fluid products sold.
- C. Effect of transportation systems on classification.
1. Extent of deliveries of milk to city distributing plants.
  2. Processing of milk products at country plants.
  3. Transportation savings on processing at country plants.
- D. Sources and prices of substitutes for products made from local milk.
- E. Kinds and availability of surplus processing facilities.
- F. History of milk utilization in the marketing area.
- VI. Level of prices. (Price material should be furnished to the extent available by months or pay periods for period up to three years before the hearing.)
- A. Price history.
    1. Class prices.
    2. Producer prices.
    3. Butterfat differentials
    4. Location differentials.
    5. Retail prices.
    6. Prices in alternative market outlets.

7. Prices paid producers in alternative supply areas.
  8. Prices paid for emergency or supplemental supplies of milk.
  9. Prices paid by handlers for dairy products purchased.
- B. Supply conditions.
1. Description of supply area.
    - a. Map of supply area (show plants proposed to be regulated and other plants).
    - b. Quantities of milk and numbers of producers supplying market by county or other geographic division.
  2. Quantities of supply by month.
    - a. From producers.
    - b. From other sources (location of such sources).
  3. Cost of meeting sanitary and other special requirements of fluid milk markets.
  4. Prices of major cost items such as labor and feed.
  5. Description of important alternative farm enterprises.
  6. Quality factors.
    - a. Butterfat tests of producer receipts.
    - b. Grade A premiums.
- C. Demand conditions.
1. Sales of whole milk and other fluid products by months.
  2. Indices of consumer purchasing power and business activity in the marketing area.
  3. Population growth as indicated by school enrollment or other local measure.
  4. Alternative markets for producer milk.
    - a. Other fluid milk markets.
    - b. Manufacturing outlets.

## VII. Pooling.

- A. Methods of pooling in effect in the market.
    1. Dealer pools.
    2. Cooperative pools.
    3. Pools administered by State regulatory agencies.
  - B. Price disparities among producers.
  - C. Distribution of surplus among handlers.
  - D. Distribution of surplus handling facilities among handlers.
  - E. Types of pools in markets obtaining milk from the same supply area.
  - F. Relationship of additional sources of supply to types of pool.
    1. Potential additional sources of milk.
    2. Quality of additional sources of milk.
    3. Intermittent suppliers in relation to sharing in pool returns.
- VIII. Other problems. Each market has its peculiar problems. Information on these problems must be developed in addition to that outlined above. The types of information which would be helpful in dealing with particular problems can be indicated if an explanation of the problem is furnished to the Dairy Division.
- Each provision in the proposed order must be justified by evidence in the hearing record. Exhibits are most helpful. In preparing exhibits, four copies are required for the record. Additional copies are normally furnished to other parties interested in the hearing. Price material and other relevant statistics should be furnished to the extent available, by months or pay periods, for a minimum of three years preceding the hearing.



